

PUBLIC HEARING

MAY 19, 2015

A public hearing of the Council of the County of Kaua'i was called to order by Mason K. Chock, Chair, Planning Committee, on Tuesday, May 19, 2015, at 1:30 p.m., at the Council Chambers, 4396 Rice Street, Suite 201, Historic County Building, Lihu'e, and the presence of the following was noted:

Honorable Mason K. Chock
Honorable Gary L. Hooser
Honorable Ross Kagawa (*present at 1:48 p.m.*)
Honorable Arryl Kaneshiro
Honorable KipuKai Kuali'i (*present at 1:33 p.m.*)
Honorable JoAnn A. Yukimura
Honorable Mel Rapozo

The Clerk read the notice of the public hearing on the following:

"Bill No. 2587 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO HOMESTAYS,"

which was passed on first reading and ordered to print by the Council of the County of Kaua'i on April 22, 2015, and published in The Garden Island newspaper on April 30, 2015.

The following communications were received for the record:

1. Alahan, Vel and Valli, May 6, 2015
2. Breen, David, May 19, 2015
3. Breen, Lisa, May 2, 2015
4. Edmonds, Harvest, May 18, 2015
5. Imparato, Carl, May 19, 2015
6. Pacuilla, Paul and Diamond, Caren, May 19, 2015
7. Kaaumoana, Makaala, May 19, 2015
8. Robeson, Barbara and Diamond, Caren, May 19, 2015
9. Rutzick, Sharon and Bill, April 28, 2015

The hearing proceeded as follows:

Committee Chair Chock: Thank you, Clerk. How many registered speakers do we have? You are not sure? Plenty? Okay. Good afternoon again. If anyone is interested in testifying this afternoon please sign up here at the front. You will all be allowed three (3) minutes to speak on the Bill. If you desire a second three (3) minutes, you can do so as well. Some people have asked to come up in a team or in a couple. That is fine. You will still have three (3) minutes and be able to come up for an additional three (3) minutes. Can we call the first speaker up?

JADE K. FOUNTAIN-TANIGAWA, County Clerk: The first speaker is Greg Allen, followed by Joanne Allen.

GREG ALLEN: Hello Council. Greg Allen. Thank you for your time. I would like to say that we are all here because of the County's Transient Vacation Rentals (TVR) ordinance, which was proposed to address some neighborhood concerns. Now, that TVR ordinance has become an islandwide taking of people's property rights. Ambiguities and lack of proper vetting during the County's possible violation discovery process has resulted in erroneous enforcement. I think because of its controversial nature, the Planning Department did not enforce the ordinance for several years until another ordinance was made by a previous County Council that forced them to enforce this ordinance. Enforcement efforts have been aggressive and vicious: condemnations of people's behavior, claims of criminal behavior, and calling them "dishonest." I do not know where the presumption of innocence has gone, until proven guilty. I would like to point out that transient and TVR refers primarily to the nonresident owners. When the ordinance was being vetted by the old County Council, they stated that they were not going to be talking about homestays because those were local residents. They were only going to go after those who did not live here. "Leave the residents that live here, who are friends and neighbors, alone." Regarding homestays, there has been no definition yet and there is no ordinance because there are many gray areas in the TVR ordinance and many supposed violators; many of which who have lived here a long time and run good businesses, been good stewards, and had no neighborhood conflicts. Some of them opted to say, "Okay, fine. We are going to operate as a homestay." They have been brought into contested case hearings. The Commission says, "They skirt the law." It is a law that does not exist. Today we are looking at that law in the form of a bill. So we are really at a place where we could begin to make some new changes. The Planning Department's tactics have been bullying tactics. They have threatened people, levied large fines, and have made criminal charges. They even fined owners for trumped up Special Management Area (SMA) violations when their building and certificate paperwork was correct. The result of all this abuse has been that the department got scolded by several lawyers and they seemed to have stopped doing anything for the meantime. It is interesting that the Planning Department sent out a violation notice to a whole bunch of homestay people even before they had a homestay ordinance. The department's violation evidence is based on a tax questionnaire that requires people to fill it out and mark it, whether they are a "vacation rental." It is the only choice. So people who want to be honest mark "vacation rental" because they are paying Transient Accommodation Tax (TAT) taxes, and then they are taken as people that are violating an ordinance that does not yet exist. The problem with this has been that...

(Councilmember Kualii was noted as present at 1:33 p.m.)

Committee Chair Chock: That was your three (3) minutes. Next speaker.

Ms. Fountain-Tanigawa: The next speaker is Joanne Allen, followed by Merlyn Ruddell.

JOANNE ALLEN: My name is Joanne Allen. I understand that there needs to be a definition of "homestay" that separates it from a "vacation rental." The difference is that someone lives there full-time. I object to that the person living there has to be the property owner. If an owner is tied to the homestay, she can never retire, never have health issues that cause her to live in full-time care, never expand to the property next door, and never have a family member run the homestay for her. I ask that as long as there is a full-time resident

living on the property, it should fall under the homestay definition. Please keep the old wording to allow the owner to have a resident “live-in” manager for the property. Regarding the Planning Commission only reviewing ten (10) applications per homestay per year—I believe this is a tactic being used by the Planning Department to weed out those that they have prejudged as violators. They have decided that most people are in violation of their definition of homestay that has not yet been approved by this County Council. At the recent Planning Commission hearing, Ka‘āina Hull of the Planning Department claimed that out of the three hundred twenty (320) people they sent cease and desist letters to, the Planning Department has already decided that roughly sixteen (16) are legitimate homestays. He and Mike Dahilig repeatedly called the rest “violators,” “illegal,” “sneaky,” and “wolves in sheep’s clothing,” saying “vacation rentals are trying to disguise themselves as homestays.” The truth is that many of those are ordinary citizens who are willing and anxious to obey the rules, whatever those rules are. We are not hiding anything or trying to pull something illegal. We report and pay our Transient Accommodations Taxes. Many people over many years have asked for a permit and have been turned away by the Planning Department. We were told not to worry and that we did not need a permit. At the last Planning Commission meeting, Mr. Hull told the Commission that there has been a permit process in place since the 1970’s. If this was true, why were we turned away? We are trying to obey, but the rule is a moving target. Ten (10) applications per year will take thirty-two (32) years for all of us to get permitted. I am telling you this today hoping that you will see that something is very wrong. Good citizens of Kaua‘i are being unjustly accused, fined, and shutdown. Bill No. 2587 will perpetuate this abuse. Please do not allow a limit on homestay application approvals. Please do not pass this Bill as it is proposed today. Thank you.

Councilmember Yukimura: I have a question.

Committee Chair Chock: We have a question from Councilmember Yukimura.

Councilmember Yukimura: Yes. Thank you for your testimony. Did you say that you applied for a permit?

Ms. Allen: No. We went into the Planning Department and asked and told them our situation and they said that it did not apply to us and that we did not need a permit, and basically told us to go.

Councilmember Yukimura: You did not need a TVR permit or any permit?

Ms. Allen: Any.

Councilmember Yukimura: Okay. Are you on agricultural land?

Ms. Allen: No.

Councilmember Yukimura: Okay. Thank you very much.

Committee Chair Chock: Councilmember Kualii.

Councilmember Kualii: When did you into Planning and ask and was told that you did not need any kind of permit, including a...I think we recently told the Special Use...Minor...there is a type of permit.

Ms. Allen: One of the times that we went in was in 2008 when we were being told that everybody needs to be grandfathered in and everybody who has a vacation rental that, "You better come in and get that." We went in like everybody else.

Councilmember Kualii: In 2008?

Ms. Allen: Yes.

Councilmember Kualii: After then, you said one of the times.

Ms. Allen: I think so, yes.

Councilmember Kualii: After 2008, no?

Ms. Allen: Yes.

Councilmember Kualii: Okay. Thank you.

Committee Chair Chock: Thank you. Next speaker.

Ms. Fountain-Tanigawa: The next speaker is Merlyn Ruddell, followed by Lisa Breen.

MERLYN RUDDELL: My name is Merlyn Ruddell. I am here in support of agricultural homestays. Just a little bit of background, my family came in 1962 when I was twelve (12) to live on Hawai'i Island, I was one of the first two (2) women to sale in Hōkūle'a. I studied with Aunt Margaret Machado. I went to Leeward and Kaua'i Community College. I started Island School with a group of people and taught Hawaiiana there and I am really committed to Kaua'i. Kilauea Farms was the first certified organic farm in 1990's. It was a lettuce operation. The reason I am here is that I have been working...sorry, I am very nervous. I have been working with a group of people, many of whom are in the room, and people that are applying for the agricultural homestays coming up on the June 23rd Planning Commission meeting and trying to come up with something that would address the issues that have been raised: the thing of using this as a way to have a pseudo TVR or a fake farm, driving up land prices, and the kinds of things that are problems with TVRs and a way to say, "No, we are not doing that. That does not work. That is bad for the community," or whatever it has been. We put that behind us. There are no complaints. For this, it would be that you would have to be a homeowner. He would have to reside in your place, you would have to show substantial farming and production that gets distributed in the community one way or the other, and you would have to renew it annually. When it comes to speculators, if a speculator buys it, they would have to be a homeowner. They would not be the "Julia Roberts speculator." It would have to be somebody who wants to make Kaua'i their home and they would have to continue to farm. The year they did not come in with a permit, it goes away because you have to renew it, just like you have to do with other permits of this kind. I know that I have given up a lot of my minutes yacking away, but I made a proposal and I vetted it with a lot of people that are concerned. It comes as a consensus and I hope it addresses some of

the really big concerns we have on Kaua'i about driving up prices and disenfranchising people who need rental homes that has come up before, and make this something different that really works for Kaua'i. Thank you for your time.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: Hi Merlyn.

Ms. Ruddell: Hi JoAnn.

Councilmember Yukimura: Thank you for being here. I did skim your written submittal and wondered how you defined "substantial agriculture."

Ms. Ruddell: For me, it would either be by filing a "Schedule F" that shows a substantial amount of income for farming, but you get into the problem like us...my passion is coconuts and I have collected from Pāhoa, all these Malaysian and Samoan coconuts, but they are still only seven (7) years old and I am going to propagate them. It is going to be a wonderful thing. Many people are begging me already for these coconuts and I have just little start. Am I going to show "Schedule F" with a lot of income yet? No. My intention, and what I have already prepared for the Planning Commission hearing coming up on the 23rd is explaining my *pro forma* exactly how much I am investing, what I am paying for labor, fertilizer, and all those things, how I anticipate to sell, and what kind of money it will bring. In the meantime, I am already doing other things, so I have some that I can show. We have like seventy (70) avocado trees in the ground, but it is going to take time before it can produce. I do not want to cut people out who are not making a lot of money yet because there are things like us where it takes time. I think you would have to demonstrate that in a real way.

Councilmember Yukimura: Okay, so we have had agricultural plans that look good on paper, but they never got implemented, but they got permits.

Ms. Ruddell: So the point here would be that in this program that I am recommending that we all talked about, you would have to come in every year and show that what you said you were doing you are doing or your permit goes away. That is it. You are done. There would be a mechanism and a fee every year so that would pay for the administration, so somebody could really check on your claim and you would have to be real. There are real people that do this and I know there are people that fabricate, and that would separate the "wolf in sheep's clothing" or something from the people who are legitimately wanting to serve Kaua'i and love to farm.

Committee Chair Chock: *Mahalo.*

Ms. Fountain-Tanigawa: The next speaker is Lisa Breen, followed by David Breen.

LISA BREEN: Good afternoon Councilmembers. I am Lisa Breen. I am here today to address homestays on small family farms. It has been thirty-four (34) years since my husband bought, cleared, irrigated, and planted an abandoned sugarcane field in Kilauea. Over the years, he also created a thriving landscape nursery. Our organic farm has been dedicated to agriculture since 1983. I believe we have fulfilled our commitment to use our property to the highest and best use of the land. We have a legally permitted guesthouse and its footprint takes

up less than one percent (1%) of the square footage of our farm. In 2002, we began welcoming visitors to the Garden Hideaway at Lotus Farm. We run it entirely by ourselves. We greet guests and provide fresh fruits from our orchards. We educate them about composting, recycling, and organic gardening. They enjoy nursery and farm tours. Should they have any concerns, they know where to find us because we are right there working and living on our farm. The Hideaway income has been a welcomed addition to our fluctuating farm and nursery income. We have always paid our General Excise (GE) and TAT taxes. Our "Schedule F" tax filings show that our farm and nursery gross sales have consistently outperformed our homestay rental income. I am certain that we are in the minority because farming is unpredictable and provides no guarantee of income. When the Planning Department workers arrived unannounced on our farm late last year, I welcomed them as guests. I gladly walked them through our nursery and orchard and down to see our guest house. When I was told after years of promises that the homestay category of accommodation was finally going to be addressed, I replied that I welcomed the opportunity to come into compliance. I was hopeful. After all, the TVR law regulating single-family dwellings on agricultural lands has allowed individuals with single-family homes, often purchased as real estate investments to rent their homes as legal TVRs outside of the Visitor Destination Area (VDA). I believed surely that the County would want to extend the same opportunities for those of us who would spend our lives calling Kaua'i "home," contributing to our communities, and working the land. I wrote to Mr. Dahilig to let him know that I was ready to do whatever it would take to finally have a legally permitted business. What that has meant so far is removing online advertising, suspending my TAT license, returning over four thousand dollars (\$4,000) in deposits to disappointed future guests, and paying a five thousand dollar (\$5,000) retainer fee to an attorney to assist us in the permit process. We continue to pay commercial use property tax rates, even though we have suspended our homestay business. Yes, it has been a financial hardship. But if what comes out of this is a thoughtful, reasonable, and well-conceived regulation regarding homestays, then it will be a "win-win-win" for the County of Kaua'i, homestay operators, and visitors alike. Some of us long for the past when life on Kaua'i moved at a slower pace. I think most people feel that way wherever they are from. It is not just Kaua'i, but the whole world that has been discovered. We can either resist it or embrace it, moving forward with mindfulness. Please, I am looking to each of you to move forward and support the permitting of homestays on agricultural lands on Kaua'i.

Committee Chair Chock: Thank you, Ms. Breen. We have a question here for you. Councilmember Yukimura.

Councilmember Yukimura: Hi. Thank you for being here. As guidelines for a homestay, are you suggesting that any homestay on agricultural land be dedicated to agriculture? Does that have to be a requirement?

Ms. Breen: I think that is one of the ways...I think the definitions under the dedication to agriculture is something that I looked at this weekend as we were going over this. There is such a big range. It goes from livestock to crop production to horticulture to aquaculture. There is a broad range available. I know that when we put in our dedication to agriculture, since we have done since 1983, we rededicated maybe two (2) to three (3) years ago again. We had to provide a business plan that says how do you irrigate, how do you fertilize, where are your trees, and what do you do with your nursery—all of that, which we provided. On top of that, they wanted to see our "Schedule Fs" and they also wanted to see a plot plan of our farm, which we provided them with. I think that is

one of the ways, but like I said, I think what is important is that not everyone is not going to make an income. There are so much that you end up having to put into your farm, and my husband will come up next and he is going to give you the lowdown on what it means to be a farmer on Kaua'i, but there is no guarantee. I can think that I am going to have a crop that is two hundred (200) pounds or one thousand (1,000) pounds, but you know what can happen? I might have just planted that lettuce and there is a flood and I do not have anything to bring to market that week. Those are the kinds of things where I feel it is kind of hard to say "Schedule F" or dedicated to agriculture.

Councilmember Yukimura: How do you distinguish between someone who is actually farming, and I have no question that you and David are farming, from those who are not really farming?

Ms. Breen: I think one of the ways is that you use the definitions that are used in the dedication to agriculture and you make them come up with a business plan. I think another thing that we did was show aerial photographs of our farm that show that you are in production.

Councilmember Yukimura: Okay. Thank you.

Committee Chair Chock: Mr. Breen.

Ms. Fountain-Tanigawa: The next speaker is David Breen, followed by Jim Hoskinson.

(Councilmember Kagawa was noted as present at 1:48 p.m.)

DAVID BREEN: Hello everybody. I am David Breen. I am here to share my perspective on farming in Hawai'i. I began farming in 1975 when I was a laborer at a papaya farm in Maui. I moved to Kaua'i in 1977 and bought raw farmland in 1981 when prices were still affordable. An idea being proposed is that homestays on agricultural lands would be permitted if a family could show that the income generated from agriculture was greater than the income from a homestay. While sales from my farm and nursery meet that requirement, it is important to understand that the steady income from a homestay will allow farmers the ability to keep producing quality food for Kaua'i and to ride out the rough times when climate and market fluctuations limit our ability to sustain our farm income. Farming is a labor of love. There are continual obstacles to overcome. It takes dedication, perseverance, and adaptability. Over the years, I have watched as Hurricane 'Iniki destroyed my barn and uprooted over two hundred (200) trees. I have fallen ill with leptospirosis from agriculture water, had export markets evaporate overnight, and kept my farms running through droughts and floods. In the early 1980's, I was exporting two thousand (2,000) pounds of papayas a week until an extremely wet winter set in, destroying the crop. I continued to sell fruit to stores, restaurants, and I shipped my annual four thousand (4,000) pound macadamia nut crop to processors on Hawai'i Island. After 'Iniki destroyed my orchards, I replanted and expanded my variety of exotic fruits. I was also re-landscaping other properties destroyed by 'Iniki and saw the need for plant material, so I expanded my endeavors to include a landscape nursery as I waited for my new fruit trees to mature. For a long time, I sent avocados and citrus to Canada on a weekly basis, but that came to a halt when mainland import laws stopped produce from coming in from Hawai'i for fear of fruit flies and other insects. "Bunchy Top Virus" eventually wiped out my entire banana crop. Then the "Heart

Rot Virus" came, which destroyed forty percent (40%) of my coconut trees. Our agriculture water source has been reasonably dependable; however, there are often breaks in the line and extended dry spells in the summer. After the breach of the Ka Loko Dam, government officials considered decommissioning it, and still are, prompting us to invest in a private well. Last year, we discovered Coqui frogs on our farm, and with the help of the Invasive Species Staff, we were able to eradicate them within one (1) month. Had we not been on top of it, it could have been a disaster. The sugarcane industry in Hawai'i was shut down once. A government subsidy stopped. We do not have a labor force that can sustain itself on third world wages. Finding good laborers is a whole other issue.

Ms. Fountain-Tanigawa: Three (3) minutes.

Mr. Breen: Farm laborers have become a vanishing breed.

Councilmember Yukimura: David...

Mr. Breen: I have one paragraph. Farming is a fickle and difficult business with no guarantees of financial success, but sharing our farm with visitors and letting them stay in our guest house provides us with steady income. The price of land on Kaua'i already makes it prohibitive for anyone coming from the mainland to buy in and set up a farm, as it would not be profitable. So allowing homestays on agricultural lands will strengthen the small farmers' ability to continue to provide fresh, local, and organic produce for the people of Kaua'i.

Committee Chair Chock: I thought that was going to go by quickly, but I let you finish because I saw your written testimony. Thank you. Any questions? If not, next speaker.

Ms. Fountain-Tanigawa: The next speaker is Jim Hoskinson, followed by Peter Eacott.

JIM HOSKINSON: I am Jim Hoskinson, but I will defer to the next speaker in the interest of time.

Committee Chair Chock: Okay. Thank you.

Ms. Fountain-Tanigawa: Peter Eacott, followed by Steven Ruddell.

PETER EACOTT: Good afternoon. My name is Peter Eacott. I live in Anahola. Just to keep it simple, the application process to be restricted to ten (10) people to me sounds totally absurd and I would encourage that we all feel that a clear definition and want to see the correct thing done here. But to restrict it to ten (10) people a year creates a situation that is almost unenforceable by itself. So I would encourage you to open that to include everyone that qualifies for this. That is all I have to say.

Committee Chair Chock: Thank you. You have a question here from Councilmember Kagawa.

Councilmember Kagawa: Are you agriculture or just a regular homestay?

Mr. Eacott: I am just regular person. I do not have a dog in this fight.

Councilmember Kagawa: No, I am asking if the property you have is a homestay.

Mr. Eacott: I do not have a homestay.

Councilmember Kagawa: You do not have a homestay. Okay. Thank you.

Committee Chair Chock: Thank you. Next speaker.

Ms. Fountain-Tanigawa: The next speaker is Steven Ruddell, followed by Calvin Toyofuku.

STEVEN RUDDELL: My name is Steven Ruddell. My wife Merlyn and I had a small farm in Kīlauea of about five (5) acres. Thank you for the opportunity to speak in favor of the homestay. I believe they are good for our community and good for the *‘āina*. In our case, having a homestay makes it much easier for us to keep our farm. Here are the benefits: we have many dwarf Samoan and dwarf Malaysian coconuts that are rare and much desired, which we are growing with the intent to sprout and sell to nurseries. We have special tea plants brought in from O‘ahu for propagation to sell here on Kaua‘i. We also have approximately seventy (70) avocado trees, which will be distributed locally and export when the trees mature. We have other agricultural products in production as well, including dryland taro, lychee, citrus, and eggs. If our goats keep jumping over the fence and eating our avocado, we might have a couple of goats for sale. We often distribute our produce to the community at no cost, including (inaudible) from our (inaudible) taro. We cannot sustain our operation with the sale of these products because of the high cost to produce. For example, our eighteen (18) chickens lay enough eggs for us to sell dozens; however, the cost to produce a dozen eggs is higher than the six dollars (\$6) we can sell them for. I think they are probably about thirty dollars (\$30) a dozen. We farm because we love the coconuts, the teas, the wonderful avocado, the dwarf apple bananas, the lychee, and so much more, and we want to share. My wife, Merlyn, works full-time in order to support our family and our operation, while maintaining all of this is expensive. I am getting up in age. I will be seventy-two (72) years old in June and I am no longer able to do the work that it takes. Farm labor is expensive here as well, at least twenty dollars (\$20) or more an hour, depending if we need irrigation repair work and especially tree work is a lot more. The farm does provide jobs. All of our planting creates crop diversity and availability of locally-grown quality foods, improves the soil, and makes our island more sustainable in case of a hurricane or shipping shortage. The County is now in a unique position to subsidize farmers in agriculture without having any cost to the local government by granting the limited provision of homestay accommodations. Furthermore, those guests who come to the homestays have the unique opportunity to live on a working farm and do enjoy living with the family who has lived here for many years. This exposes people to what is best on Kaua‘i. I do not believe it makes sense to require that an owner make more at farming than in homestays.

Committee Chair Chock: Thank you, Mr. Ruddell.

Mr. Ruddell: This would treat unfairly growers like us who are growing products that take time to mature. Thank you.

Committee Chair Chock: You have a question here. Councilmember Yukimura.

Councilmember Yukimura: Thank you, Steve. Do you plan to sell any of your produce when you have a full...

Mr. Ruddell: With the avocados, for example, and the dwarf Samoans and Malaysian coconuts, when we get those to sprout, we are going to sell those to the nursery like Kaua'i Nursery and Landscaping (KNL) has agreed to do.

Councilmember Yukimura: We are trying to distinguish between commercial agriculture and agriculture that is just for a homestay. I am just asking that question. Can you and everybody else who has read their testimony today submit it in writing if you have not already sent it to us on E-mail? Can you please submit your written testimony? Thank you very much.

Committee Chair Chock: Next speaker.

CALVIN TOYOFUKU: Hi. My name is Calvin Toyofuku. I was born and raised on Kaua'i. I live in Puhi, where I have a farm with my future wife and my brand new baby girl. I work for Steven and Merlyn in Kilauea two (2) days a week. This income helps to support me, my farm, and my family. I help Steven and Merlyn with planting seventy (70) avocados trees on the steep hillside and produce a lot of avocado for sales on Kaua'i for their export. I also help to maintain the rest of their fruit orchard, goats, chicken, pastures, vegetable garden, taro, and sweet potato. I am working on a nursery with them with dwarf coconuts for sale. The farming operation creates employments for me and other people working there on their land. Well, I support Steven and Merlyn and being able to have their homestay.

Committee Chair Chock: Thank you. Next speaker.

Ms. Fountain-Tanigawa: The next speaker is Anne Punohu, followed by Julie Souza.

ANNE PUNOHU: *Aloha.* My name is Anne Punohu. What has it been? Twenty-five (25) years since we have been talking about this? I am still coming to meetings regarding this. When you hear the stories of these individuals, a lot of them were here before the hurricane. They are the legitimate farmers and they are renting out their homes. At first blush, that is fine with me and I do not have a problem with that. I do not see a problem with homestays if it stays in that context and that context alone. However, we all know that these issues do not stay contained. They are like fires that blow all over our island and they become real problems, which is why we are here today. If we are going to do a homestay ordinance, I will ask that no homestay be allowed in Hanalei. It is at its zenith and cannot support anything more on the north shore. However, it may be more amenable in other areas. I do not know. My suggestion is to take any people who were farming a legitimate homestay and doing legitimate, vigorous agricultural activity prior to the hurricane to be grandfathered in. The ten (10) limit now after per year is fine as far as I am concerned, but I will tell you that there is probably a

lot more than ten (10) people that should be grandfathered in prior to 1992, because there were probably more than ten (10) people doing it prior to 1992. Of course, they would have to have followed everything that...apparently I hear that everybody has followed the ordinances and that they have paid their taxes and done all of these things. If they can prove all of these things and that they have been doing this consistently and continuously prior to the hurricane, I think they should be grandfathered in and given an opportunity to continue, because I think it is a good thing. However, my concern is anything further from this day further—no. I would say that I believe in the homestay ordinance law, as it is limited to ten (10) people per year and no more. That is my suggestion today for you after going to these hearings for several decades and being here for every single rule and law that has been passed in here. I just do not want us to confuse it anymore. Let us be real clear this time. If people feel that they have been abused by the Planning Department, whether those of us who felt that the Planning Department has done nothing...if you tell people that they do not need any permits, and then you turn around and tell them that they do and treating them like they are criminals—I do not know if that is the best public relations attitude to have either. Let us try to work on that. *Aloha*.

Committee Chair Chock: *Mahalo*. Next speaker, please.

Ms. Fountain-Tanigawa: The next speaker is Julie Souza, followed by Sam Lee.

JULIE SOUZA: *Aloha* Council Chair and Members. My name is Julie Souza and I live in Kukui'ula. I am here today to support the ordinance as-is. At first, I was not going to speak because a lot of us local people kind of just stand and hang behind and let everybody else do what they need to do, but it is not right. I think it is time for us to step forward as the residents of Kaua'i. As I say, I am here to support the ordinance for having a cap on permitting the bed and breakfast (B&B) applications. We cannot let the same thing happen like when all of the illegal vacation rentals were grandfathered in. All of a sudden, they were grandfathered in. They need to be permitted. For instance, look at what happened in our little neighborhood. There are at least twenty-seven (27) TVRs and on my end of Ho'ona Road, there are at least eighteen (18) alone, leaving me the only one on the flat area of Ho'ona Road left. The local people feel intimidated by all that is happening with this bed and breakfast, and it should not be that way. Why are the owners of the bed and breakfasts crying about this whole permitting? Is it not just illegal? Why do they think that they are above the law and that they do not need to get a permit? Having the bed and breakfast...most of the owners are paying their mortgages. Do you see our local families trying to do this? I do not think so. Look deep into your hearts and follow what is on the table as having a cap on bed and breakfasts. Besides, the more B&Bs that we have here on Kaua'i will lessen the amount of rooms that our hotels and condos will have. Right now, the condos and the hotels are the bread and butter of Kaua'i, and not the bed and breakfast. They are doing their own houses. They are not using the labor forces here on Kaua'i as the hotels and condos are. *Mahalo* for your attention on this matter.

Committee Chair Chock: There is a question here for you from Councilmember Yukimura.

Councilmember Yukimura: Thank you, Aunty Julie.

Ms. Souza: You are welcome.

Councilmember Yukimura: Do you know how many bed and breakfasts versus standalone vacation rentals there are in your neighborhood?

Ms. Souza: Right now, as far as I know, there are not any bed and breakfasts in our neighborhood. They are all TVRs, but I am sure that if there are some owners out there wanting to get a little bit more revenue, they would change one (1) room of their houses into a bed and breakfast.

Councilmember Yukimura: But they would have to live in it, too.

Ms. Souza: So I believe the problem there is the enforcement. Who enforces all of this? Do we get a police in our own areas to enforce? It is not right.

Councilmember Yukimura: No, you raised a good question about enforcement, but you can see the distinction between people who live in their homes and accommodate guests versus people who may live on the mainland and not be around to be accountable.

Ms. Souza: But as it is right now, you can probably count on one hand how many of us are living down in that area.

Councilmember Yukimura: Yes. The Bill is designed to tighten up the definition of homestay. Thank you.

Ms. Souza: I appreciate that. Thank you.

Committee Chair Chock: Next speaker, please.

Ms. Fountain-Tanigawa: The next speaker is Sam Lee, followed by Jerry Ornellas.

SAM LEE: Chairman and Members of the Council. I am here to speak in support of the ordinance. I did not originally feel that way, but having read the current version of the ordinance before you illustrates to me that this County is concerned about numbers, limits, and controls on process. That is something that we support. Furthermore, we see this ordinance as being a compromise to say the least under very difficult circumstances. We are agreeable to a compromise, understanding that a compromise means coming to the center by all parties concerned. I will just wrap up my comments by saying that I think that seeking a compromise is the proper thing to do and we urge you to consider that aspect and the benefits of that with this ordinance. Thank you.

Committee Chair Chock: Thank you. Next speaker, please.

Ms. Fountain-Tanigawa: The next speaker is Jerry Ornellas, followed by Keli'i Alapai.

JERRY ORNELLAS: Good afternoon Members of the Council. My name is Jerry Ornellas. I am a farmer and property owner in Kapa'a homesteads. I would advise you to take a cautious approach on the bed and breakfast operations in agricultural areas for several reasons: primarily, we lack an overall strategy on how to deal with agrotourism on Kaua'i. We have really no guiding document to tell

us. If this ordinance is passed, I believe it is going to create a lot of problems for some of our farmers. We have heard a litany now of hardship cases. A good week for me...when I talk about a good week...and I work every day—if after expenses I end up with five hundred dollars (\$500), that is a good week for me. Somebody running a B&B is going to be making an excess of two thousand dollars (\$2,000) a week, right? This is going to be a neighbor...

Committee Chair Chock: Please keep it down.

Mr. Ornellas: Well, maybe I am mistaken. I have never run one. I do not know what they make, but I am sure it is significant. It is a lot more than five hundred dollars (\$500) a week, I would assume. These are the guys that are going to complain when I start my tractor up at 7:00 a.m. The other point I want to make has to do with the farm dwelling agreement. The last time I brought up the farm dwelling agreement to this body, one of the Councilmembers laughed out loud. Those of you who are familiar with this document know that anybody who builds a house on agricultural land has to sign one of these agreements and they have to have it notarized. It goes along with your deed to the Bureau of Conveyances. It says, "The dwelling shall only be occupied by a family as defined by the State Land Use District regulations as recited herein, who derive income from the agricultural activity on the parcel." That is pretty straightforward. The County has chosen to ignore enforcement of this, which is basically a State law, as did other counties in the State. I think we are seeing the results today.

Committee Chair Chock: Thank you. Any questions? If not, next speaker, please.

Ms. Fountain-Tanigawa: The next speaker is Keli'i Alapai, followed by Darryl and Julie Chong.

KELI'I ALAPAI: *Aloha mai kākou.* Thank you for this afternoon. For the record, my name is Keli'i Alapai from Hā'ena. I am in support of agricultural homestay. I think those that are working hard to provide food or whatever it may be...it is the best thing. They are trying to make a living. I am against those that own TVRs that do not live here and are not on this island. These people live here and are working to make a living. They provide work for the community, too. I know families that are agricultural homestays. They provide me with work, too. I think that is a good thing, Council. I will advise you to really look into this and give it a good thought. Our island is only so big. We have to take care of our *'āina*; take care of our island; and take care of our people. I can speak because I am from Hā'ena. I am with an organization called "Hui Maka'āinana O Makana." What we are doing out there is to sustain the families. I come here in support of agriculture and I invite you if you are down that side to come and visit us and check us out. Thank you.

Committee Chair Chock: *Mahalo nui.* Next.

Ms. Fountain-Tanigawa: The next speakers are Darryl and Julie Chong, followed by Kirby Guyer.

(Councilmember Kaneshiro is noted as having left the meeting at 2:17 p.m.)

DARRYL AND JULIE CHONG: *Aloha* Councilmembers. My name is Darryl and Julie Chong. We would like to address the portion of Bill No. 2587 that

proposes no more than ten (10) applications for homestay operations be reviewed by the Planning Commission each calendar year. I humbly request that the entire portion of the Bill be removed and replaced with something similar to "the Planning Department shall be granted the authority to issue conditional use permits to homestays and bed and breakfast operations that can meet and provide the necessary tax records and building requirements to show a legitimate short-term transient rental operation while they await final review and approval for their use permits by the Planning Commission." To discuss this topic, we need to refer back to the 2008 TVR regulations that set the precedence and standards for all short-term transient rentals on Kaua'i and how they should be handled and treated with equal consideration. If memory serves us correctly, in the earlier drafts of Bill No. 864, TVRs and homestays were grouped together and were later separated with the homestays and B&Bs being excluded from the piece of legislation partly because of the owner-occupant component. Approximately between the time of 2008 and 2010, TVR owners were encouraged to apply for Nonconforming Use (NCU) Permits while still being allowed to run their businesses without interruptions or consequences. This was not the case for homestay owners. Beginning in 2014, homestays and B&B owners were sent notifications with ultimatums to cease and desist operations within a fourteen (14) day period or be subject to fines upward of ten thousand dollars (\$10,000) a day. Further instructions were to remove advertising websites and cancel all rental obligations, which meant refunding rental deposits and displacing guests on short notice. For TVRs and homestay operations, to be treated equally, we request that the cease and desist orders that were sent out be retracted...

Committee Chair Chock: Mr. Chong, I am going to ask you folks to come back because I know you have another page to speak on.

(Councilmember Kaneshiro was noted as present in the meeting at 2:19 p.m.)

Mr. Chong: Okay.

Ms. Fountain-Tanigawa: The next speaker is Kirby Guyer, followed by Bruce Fehring.

KIRBY GUYER: Aloha. My name is Kirby Guyer. My husband's name is Toby. He is gardening right now, but I am not on agricultural land. I have a bed and breakfast that I have had for thirty (30) years on the north shore of Kaua'i. I am not a TVR; I am a bed and breakfast. Every morning between 7:30 a.m. and 9:00 a.m., all of you are welcomed to come and join us at breakfast. My story is that I started in a one (1) bedroom, one (1) bathroom house and slept in the front room and rented the one back so that I can show my guests how beautiful this place was and how sincere it was. I still do that and so does my husband. In the year 2000, we were finally able to purchase a piece of land in the residential area. It was Kobayashi subdivision in Wainiha. We planned our home specifically as a bed and breakfast. Our past years of experience was our guide. There was everything in this home that independent travelers would want and alternative accommodation. We share our large main kitchen with all of our guests. We have our own bedroom, office space, bathroom, and utility kitchen for baking and breakfast preparation. All of our rooms are under one (1) roof. Our home was completed in 2004. We have been operating 24/7 ever since. We live in our home. We enter through the same door as our guests. We pay all of our taxes monthly, we have a homeowner's exemption, paved parking, and a septic system sized to accommodate our bedrooms. We applied for a use permit back in July with the help

of an attorney, because I could not figure it out myself. Prior to that date, we had no idea that we needed one and our ignorance is no excuse. Our permit has been accepted and we had a hearing on January 18th by the Planning Commission. It has been deferred and I guess it is possibly in your hands at this moment to make definitions. At the last Planning Commission meeting where I also testified, I said, "Let us get the definitions. Let us finally get this done." We sincerely hope that this is at least a start of that process. I thank you so much for being here for us right now, because it is a start. I sincerely hope that the definitions of businesses such as ours can be refined by the Council. The process of just closing down locally owned and operated family businesses does not make a lot of sense. Thank you.

Committee Chair Chock: Thank you. I have a question. You said your permit was deferred. Was there a reason that was given?

Ms. Guyer: Yes. During the Planning Commission hearing on January 18th, Ms. Diamond and Ms. Robeson filed a notice of intervention because they...for whatever reason...I still have not figured out...perhaps they think I am not good for the community. They also have not been to my Fourth of July party that three hundred (300) people come to.

Committee Chair Chock: You have one more question here from Councilmember Yukimura.

Councilmember Yukimura: Hi Kirby. You said that you are not on agricultural land and that you are on residential zoned land.

Ms. Guyer: I am on residential land.

Councilmember Yukimura: Okay. How many rooms do you have? How many visitors can you accommodate?

Ms. Guyer: In four (4) rooms, I can accommodate eight (8) people.

Councilmember Yukimura: Okay, but four (4) rooms?

Ms. Guyer: Yes.

Councilmember Yukimura: Okay. Thank you.

Committee Chair Chock: Next speaker.

Ms. Fountain-Tanigawa: The next speaker is Bruce Fehring, followed by Sean Tesla.

BRUCE FEHRING: Councilmembers, thank you for hearing my testimony. My name is Bruce Fehring. I have been a resident of Kilauea for over twenty-eight (28) years. My wife Cindy and I have raised our five (5) children here. Some were born here and some have died here. This is our home and this is where we plan to live for the rest of our lives. We love our farm, our community, and our friends, and our lives here. I consider myself both a local and *kama'āina*. We operate a diverse sustainable, family farm. We grow a wide variety of row crops, including many types of greens, herbs, root vegetables, and sugarloaf pineapple of which we have approximately one thousand five hundred (1,500) planted. Our

orchards include a total of over one hundred (100) fruit bearing trees, representing over thirty-five (35) varieties. We have planted over four hundred (400) hardwood trees for future financial security so that our children and our grandchildren can continue on with our farming project. Produce is harvested regularly and is available at our farm stand, as well as taken weekly to the Kīlauea farmers market. We also raise chickens and ducks for eggs, have two (2) dairy cows, which are pastured and rotated around the farm who will hopefully be producing milk in the near future. We have two (2) active beehives from which we harvest honey on the farm and hope to increase that number yearly. Nothing goes to waste on our farm. If it is not sold, donated, or eaten by ourselves, it is fed to the animals or composted to enhance our soil fertility. We are all aware of what the world's oldest profession is, but are we aware of what the world's accommodation is? It is homestays. Farming for profit without government subsidies is not an easy road home. To create supplemental income, we wish to continue to operate a homestay on our farm. We have the support of our neighbors and have had no complaints from anyone. We paid our GE taxes, TVR taxes, and property taxes regularly for many years, and we contribute to the local economy by creating jobs and by spending most of what we profit, we can manage right here on Kaua'i. Many guests who have passed through our farm have been inspired by what we have created and do here and have vowed to go home and plant a garden or create a similar lifestyle for their families. Without supplemental income from our farm-stay, we would have great difficulty continuing on as an innovative family farm. Our costs seem to be ever increasing: property taxes, utilities, irrigation costs, labor, tractor payments, equipment maintenance, fuel, and etcetera. Our supplemental income has kept us afloat and enabled us to move forward in developing our farm. I wholeheartedly agree with a revised homestay definition in the bill you are considering. However, I have great concern over a limit of ten (10) homestay applications being considered each year. If all of the existing homestays that meet reasonable standards are allowed to be grandfathered, as is my suggestion, a more reasonable limit of twenty-five (25) new applications per year seems appropriate. While the current Proposed Bill does not allude to allow homestays on agriculturally zoned land, the Planning Department has made clear that their position is to disallow it in future proposed amendments to the Bill. Farm-stays are a worldwide tradition that has resulted in saving family farms around the world. Please honor that tradition and help us to continue to create local food security here on Kaua'i. Thank you.

Committee Chair Chock: Thank you. Next speaker, please.

Ms. Fountain-Tanigawa: The next speaker is Sean Tesla, followed by Barbara Robeson and Caren Diamond.

SEAN TESLA: Good afternoon Councilmembers. I have lived on Kaua'i long enough to vote for most of you. I am not happy today at all...

Committee Chair Chock: Can you please state your name?

Ms. Tesla: Sean Tesla. As we speak, I am being evicted by the actions of the County Planning Department because I am a tenant who previously was hosting a very successful homestay in Anahola. The County gave us fourteen (14) days to shut down on May 1st and I personally handled that shut down and did so by May 15th. This brings us very current. The County is now threatening my landlord and property owner to formally serve me an eviction in order to not further be fined. That is just ridiculous. That is an abuse of power. I am a resident being evicted. How do I find a new place with an eviction record?

Fourteen (14) days to shut down a homestay? We paid our taxes: GE and TAT. The property pays higher in property taxes as a TVR. The County Planning Department going on record saying, "This is not a massive sweep going only after people with discrepancies." We have no tax discrepancies and no complaints. Look at what is happening under your watch. There are some extreme things going on right now. I implore you to look at how the counties of San Francisco are handling this on a bigger scale. They passed an ordinance in October of last year and there is even a Nolo Press summary of how to interpret that. A very fair solution that takes into account the differing opinions you are hearing: people who do not want them and people who do want them. Millions of dollars have already gone into solving this. I expect leadership and responsibility from you and I am telling you right now that I expect that these people in these positions in the County Planning Department be fired for their abuse of power, their malicious conduct in getting me evicted when I complied with an outrageous fourteen (14) day period. Nowhere on Earth is any county in the world asking for a fourteen (14) day shut down and ten thousand dollars (\$10,000) fines. Maybe five hundred dollars (\$500). Maybe one thousand dollars (\$1,000). Pardon my French, but there is nowhere more f***** up on this planet than the Kaua'i County Planning Department. If you have any questions, I am happy to announce that I would like to leave you with some material.

Councilmember Yukimura: I have a question.

Committee Chair Chock: You can leave that with Scott.

Council Chair Rapozo: She needs to calm down.

Committee Chair Chock: I am going to ask you to control your language.

Ms. Tesla: I hope you can understand why I might be a little upset.

Committee Chair Chock: You have a question.

Councilmember Yukimura: Ms. Tesla, was the owner of the home living in this?

Ms. Tesla: No, she was not and that also was one of my comments on this current ordinance. It should not be discriminating against tenants who live on the property.

Councilmember Yukimura: You have the right to express your opinion, but we are here trying to make a policy decision, so we are taking input from everybody. It sounded like you were alleging that the Planning Department had demanded that you be evicted. Is that correct?

Ms. Tesla: Yes, this is not an opinion. This is happening right now. She will be fined unless she can serve...by an attorney a proof of service that I had been evicted and I had the most unbelievable record with this landlord and property owner.

Councilmember Yukimura: I would like to see the communication from the Planning Department that does seem very inappropriate at the least.

Ms. Tesla: Yes:

Councilmember Yukimura: Will you please provide that copy, please?

Ms. Tesla: I do not know if I have that in writing. As soon as I am served, I will have that. At this point, I am probably leaving the island.

Councilmember Yukimura: Those are very severe allegations to make, so I would like to have some form of proof that they are actually...

Ms. Tesla: Sure. If any media is here, this will be on the New York Times. I assure you. This County needs to fix this abuse of power and malicious behavior. It is ruining this County.

Councilmember Yukimura: Okay. We can understand your anger, but it still does not justify that kind of language in the public place. Thank you.

Committee Chair Chock: You have one more follow-up question.

Council Chair Rapozo: Thank you. I am trying to understand the chronology of what happened. The Planning Department sent out cease and desist notices to the owners of the property.

Ms. Tesla: Correct.

Council Chair Rapozo: So your landlord got a notice. You are a tenant.

Ms. Tesla: Yes.

Council Chair Rapozo: But you were not a bed and breakfast tenant, you were a long-term...

Ms. Tesla: No, I am a tenant and a homestay operator.

Council Chair Rapozo: Okay, so I am trying to understand...obviously, the owners are absentee?

Ms. Tesla: Yes.

Council Chair Rapozo: You were basically hired to run the bed and breakfast.

Ms. Tesla: Yes.

Council Chair Rapozo: Because they were issued a cease and desist...

Ms. Tesla: We deactivated our listings and starting letting our bookings run out. I worked with the property owner to get it listed to sell. We are already shutting down and she is selling the property.

Council Chair Rapozo: I guess I am confused because let us say the bed and breakfast was seized—I am trying to understand why you would be evicted if you would be a tenant.

Ms. Tesla: I am trying to understand that, too.

Council Chair Rapozo: But you have not received anything. Where did you hear that you were going to be evicted?

Ms. Tesla: When my landlord called me on May 1st and said we need to shut this down, which I then did within twenty-four (24) hours.

Council Chair Rapozo: Okay, I got that part of it.

Ms. Tesla: Yes, and a few days later...I would have to look for the exact date, but a few days later she called me to say, "This is really crazy, but the County is now requiring that we serve you and show proof of serving you or they will still fine us ten thousand dollars (\$10,000)."

Council Chair Rapozo: Okay. I think that is where maybe the breakdown in the communication is. I am not going to debate you here. This is a public hearing. We will have time for that at the Committee Meeting, but I just kind of wanted to understand. I know that we are not sending out eviction notices. That I know. So that came from the landlord? I will follow-up with the Planning Department.

Ms. Tesla: Very good.

Council Chair Rapozo: Thank you.

Ms. Tesla: Thank you.

Committee Chair Chock: Councilmember Kualii.

Councilmember Kualii: I just have a quick follow-up. You stated "deactivated and started letting our reservations run out."

Ms. Tesla: Yes.

Councilmember Kualii: If the notice was to cease and desist...so you stopped taking new reservations, but you continued to have guests past the point of...

Ms. Tesla: That is correct. That is one of the things that I would like to suggest be really thought about...asking somebody to stop immediately when there is no formal permitting process that you can even achieve. It is kind of like shoot, and then ask questions. We were caught between a rock and a hard place trying to not disrupt vacationers and also transition the house and sell it, and bring it to a graceful close. I really would like someone to maybe give the County a little advice on how to do things gracefully.

Councilmember Kualii: Thank you.

Ms. Tesla: Anymore questions?

Committee Chair Chock: Councilmember Kagawa.

Councilmember Kagawa: This is a process question. I would like the Chair to exercise his right if there are "f" words coming out and what have you that we cut the testimony off immediately. I think there needs to be some sort of control showed by the public. Thank you.

Committee Chair Chock: Thank you. Did everybody hear that? Watch your language. Councilmember Hooser.

Councilmember Hooser: I would encourage people to watch their language as well and just be respectful of each other in general, because sometimes it is not only swear words, it is other offensive framing of the issues.

Committee Chair Chock: Absolutely.

Councilmember Hooser: For the record, I did not think it was appropriate for a question, but I think it is appropriate to clarify for the public that the Council by law cannot direct the Planning Department or the Planning Director to do anything. We cannot fire anybody. We cannot control them. That is the Mayor's job. It is against the County Charter for us to communicate directly with them. We have to go through the Mayor. So as unhappy as people might be, and I also question some of the actions, it is not our role legally to interact directly with the Planning Department. I just wanted to make it clear on that. Thank you.

Committee Chair Chock: Thank you. Next speaker, please.

Ms. Fountain-Tanigawa: The next speakers are Barbara Robeson and Caren Diamond, followed by Cathy Cownern.

BARBARA ROBESON: Barbara Robeson for the record.

CAREN DIAMOND: Caren Diamond.

Ms. Robeson: Aloha Chair and Councilmembers. I hope that you have our testimony that was submitted. That is what we are going to be reading. We are in strong support of the Homestay Bill as proposed by the Planning Department and encourage the Council to move Bill No. 2587 forward to the Council Planning Committee for their swift action and the final Council approval. As the homestay definitions and other related bills progress, we will recommend that to protect the health, safety, and welfare of our residential community, none of the ten (10) annually proposed homestay or bed and breakfast permits be allowed in the Hanalei District, which is from Hanalei to the end of the road at Kē'ē. The district is in overload with the current number of legal and illegal TVRs plus the illegal number of homestay or B&B units in the district. Recent data on the number of vacation rentals in the Hanalei District includes...and you have three (3) examples there...the Hawai'i Tourism Authority (HTA) individually advertised units was three hundred fifty-five (355) units in the area in the district. In the 2010 consensus, the seasonal units were three hundred twelve (312) units. The County of Kaua'i has a weekly TVR list that they post online and the permits were about two hundred sixteen (216) in the district. Below that on our testimony, you have the chart that came from the Hawai'i Tourism Authority study. If you notice there, of course Kōloa and Princeville are in the visitor destination area, and

also Hanalei is not. The percentage of the individually advertised units in the Hanalei District is almost as high as those in the VDA. Almost fifty percent (50%) of the County's approved TVR-NCUs are located in the Hanalei District, which again is a non-VDA area. On Kaua'i, the Hanalei District has been disproportionally impacted by the large concentration of visitor units again in the Special Management Area, resulting in negative, cumulatively impacts. No more vacation rentals should be permitted in this district. This map that you are seeing there with the green dots on it...the source of that came from the website for VRBO and those dots are TVR units that are just advertised on that particular website, so that is not inclusive of all of the "legal" and then the "illegal units, homestay and B&Bs that are available. You have the quote from the General Plan to the right of that, and then the next thing for discussion is a civil defense map in the same area, which is illustrated below.

Committee Chair Chock: We are out of time here, but I think we might have some questions. If not, I just want to clarify that you folks are in support of the Bill as it is without any amendments.

Ms. Diamond: That is correct. We are in support of the Bill, in large part because of all the testimony here...all of the different things could take a very long time for the issue to work itself out. The ten (10) is really like an interim number until a more comprehensive ordinance is passed and if a more comprehensive ordinance does get passed over ten (10) years, that would be one hundred (100) B&Bs. Even at that ten (10) is a substantial number.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: Thank you for your testimony. Your accounting or the identification of vacation rentals...are they both legal and illegal or just the legal ones?

Ms. Robeson: Are you talking about the third bullet on the first page of the two hundred sixteen (216)?

Councilmember Yukimura: I am not looking at your thing now.

Ms. Robeson: The ones that have a permit, there are about two hundred sixteen (216) in the Hanalei District on the Planning Department's list that they publish on their website.

Councilmember Yukimura: So they are ones that are permitted?

Ms. Robeson: Permitted, yes, those have NCU.

Councilmember Yukimura: And the district is all the way to the end of the road or to Kē'ē?

Ms. Robeson: Correct.

Councilmember Yukimura: How many of those are in Hanalei Town itself?

Ms. Robeson: I have it in my purse.

Councilmember Yukimura: Can you provide that later?

Ms. Robeson: Yes.

Councilmember Yukimura: So these are essentially just an accounting of the legal ones, not...

Ms. Robeson: Not the illegal ones. According to the calculations from the Hawai'i Tourism Authority and the census data, it is more than that, about three percent (3%) more.

Councilmember Yukimura: What is it?

Ms. Robeson: If there are two hundred sixteen (216) on the Planning Department list, census data had seasonal units of three hundred twelve (312) and the Hawai'i Tourism Authority had three hundred fifty-five (355) that they identified.

Councilmember Yukimura: So there might be over one hundred (100) that are illegal?

Ms. Robeson: Illegal yes, about.

Councilmember Yukimura: Are some of them in the conservation district as well?

Ms. Robeson: I am not sure that those include the conservation district ones, which we also have a list of.

Councilmember Yukimura: Okay. Any supplemental information that you can provide will be most appreciated.

Ms. Robeson: Of course we will be doing that.

Councilmember Yukimura: Okay. Thank you.

Committee Chair Chock: Thank you. You have one more follow-up question from Councilmember Hooser.

Councilmember Hooser: Of the estimated one hundred (100) illegal, that mixes up bed and breakfast or homestays and bed and breakfast and TVRs?

Ms. Robeson: It could, yes, based on this documentation. This came from advertisement from the Hawai'i Tourism Authority. Well, it says "individually advertised units, three hundred fifty-five (355)." It could be TVRs, homestays, or B&Bs.

Councilmember Hooser: But we do not know how many homestays?

Ms. Robeson: No.

Councilmember Hooser: Okay. Thank you.

Committee Chair Chock: Follow-up question, Councilmember Yukimura.

Councilmember Yukimura: Did the Hawai'i Tourism Authority list the projects individually so that you could actually see what made up that total of three hundred fifty-five (355)?

Ms. Diamond: I believe they did and we can provide that.

Councilmember Yukimura: Okay. Thank you.

Councilmember Hooser: I have a question.

Committee Chair Chock: Go ahead.

Councilmember Hooser: The questions just keep coming. Do the numbers include individual condominium units in some of those projects?

Ms. Diamond: No, so that excludes Princeville.

Councilmember Hooser: Or Hanalei Colony Resort.

Ms. Robeson: That is not in there.

Councilmember Hooser: Okay. Are there any agricultural properties?

Ms. Diamond: No.

Councilmember Hooser: So agriculture is not an issue. Thank you.

Ms. Diamond: Our testimony is focused for the Hanalei District.

Committee Chair Chock: Councilmember Kualii.

Councilmember Kualii: So you are pretty clear that the Hanalei District, as you are putting it forward, ends at the end of the road, but where does it begin? When I look at this map of the bay and the green spots everywhere, there is even a spot that is north of the river, so it appears to be either in Princeville or down the bluff from Princeville. Where do you start the line for Hanalei District?

Ms. Robeson: It is related to the census data. Hanalei to the end of the road is in one census district and from Princeville to Kilauea on is another one.

Councilmember Kualii: So meaning down by the river...

Ms. Robeson: Right. Princeville, of course, is in the VDA.

Councilmember Kualii: Thank you.

Committee Chair Chock: I know you folks did not finish, so I will ask you to come back if you have more to share. Thank you. Next speaker, please.

Ms. Fountain-Tanigawa:
by Lorna Hoff.

The next speaker is Cathy Cown, followed

CATHY COWN: My name is Cathy Cown and would I like to thank the Council for giving me the opportunity to speak to the issue of farm-stays. Next week will mark the 25th anniversary of the day that Bill and I arrived on Kaua'i with our two (2) baby daughters. We came with a vision of growing trees on our steep agricultural parcel in Lāwa'i Valley. We also had a vision of including a bed and breakfast to help financially, as farming timber is a long-term investment. We have been operating our bed and breakfast business for twenty-three (23) years. Over the years, we have paid one hundred seventy-five thousand dollars (\$175,000) in GE and Transient Accommodations Taxes. Our guests help to support nearby restaurants and shops. It has not been an easy business requiring access to guests 24/7, learning how to attract customers in an ever changing market, and having to somehow make it through the tough times when there are no visitors due to hurricanes, terrorist attacks, and market crashes. Through hard work, we have managed to create a good business, but many guests returning year-after-year and the ability to hosts friends and family of our neighbors. Over the years, we have tried on more than one occasion to get a permit. Most recently when TVR permits were being issued, we tried to apply and were told that since we were a bed and breakfast, we did not fall under those regulations and therefore did not need to get a permit. We have never been told anything about needing a use permit. I am also so offended by the treatment we are receiving in the press and in online blogs. The receipt of a cease and desist letter for running an illegal TVR business has been devastating. Having been told that we cannot get a permit by the Planning Department because we are not a TVR, and then being shut down for the very same thing is to say the least baffling. I am not sure how many of you would relish the thought of having you and your spouse suddenly be put out of work with no warning. It has been an extremely difficult time for me and my family. I am at a loss to understand why, as long time residents of Kaua'i, participants in the community, members of church, and taxpayers; we are being singled out for this treatment and many nonresidents have been given permits to operate transient rentals. We have raised our family here, put our two (2) daughters through college, volunteered in the classrooms over the years, been members of Parent-Student-Teacher Association (PTSA) organizations in their schools, volunteered at church, coached soccer, volunteered with local theater, and helped the Farm Bureau Fair every year. We try and donate time and money wherever we are needed. I think it would be a very sad day if people like us were no longer able to be on Kaua'i making a contribution. There are two (2) industries on Kaua'i: agriculture and tourism. It is very difficult with the price of land to make a reasonable living doing agriculture. By eliminating this source of income for farmers, you are affecting the potential to make them a valuable segment of middle-class residents. You move towards a population with very high income residents, high income nonresident property owners, and low income residents who service the visitor industry. I question the future of agriculture on Kaua'i where we no longer grow sugar; we are discouraging the seed companies from remaining here; and we are trying to prevent a dairy from developing. I wonder what agriculture is being planned. I know how difficult it is for a small farmer to survive here and I cannot imagine why they are many that are even trying to try.

Committee Chair Chock:
questions here.

Thank you. That is your time. We have

Councilmember Yukimura:

Hi Cathy. So you are on agricultural land.

Ms. Cowern: Yes.

Councilmember Yukimura: May I ask how many units or room you have?

Ms. Cowern: We have two (2).

Councilmember Yukimura: Two (2) bedrooms. Okay, thank you very much. Just for myself, I apologize for what you have had to go through.

Committee Chair Chock: Next, please.

Councilmember Yukimura: I have one more question. You were actually told that you did not need a permit for your...

Ms. Cowern: We have been told that we have been watching you for years and that you are fine. Homestays are a bed and breakfast. We are excluded from the TVR regulations.

Councilmember Yukimura: So they did not say, "You do not need a TVR permit, but you do need a special use permit?"

Ms. Cowern: No, I was not aware of it. I do not even know what a special use permit is until now and that I am paying a lot of money to get one.

Councilmember Yukimura: If you have answers to these questions, you can say it now or you can submit it to me offline. I would like to know who you spoke to in the Planning Department and if you can recall about when like what time, what date, what month, or what year.

Ms. Cowern: It was about one (1) week before they were going to close the window.

Councilmember Yukimura: For the TVRs.

Ms. Cowern: Yes.

Councilmember Yukimura: So that might have been 2009.

Ms. Cowern: I will get back to you offline with who and when.

Councilmember Yukimura: Yes. Thank you.

Committee Chair Chock: Next speaker.

Ms. Fountain-Tanigawa: The next speaker is Lorna Hoff, followed by Tina Sakamoto.

LORNA HOFF: Aloha Council. My name is Lorna Hoff. I certainly did not prepare to make any comments, not at this meeting anyway. But I noticed...I am a B&B and I am on agricultural land and I am in Lāwa'i. I have been operating for about fifteen (15) years. I have lived on the island over fifty (50). I have raised all of my children here and all my children have come back. When we

were able to Condominium Property Regime (CPR) a property, which I understood when we CPR'd, it is because our children needed places to live, and when that became available, our children did CPR our property and they do live right next to me. I know there are a lot of problems like the TVR, where people have come from the mainland, and then rented out the house. Well, when we CPR'd our property, we thought the understanding was that this is for the children of the residents because it was difficult to find places to live on the island. But that is kind of going off on a tangent. My main thing on my agricultural property is that with this Bill, I would like really like it to be well-thought out, because I am in a situation where my property drops off on both sides. It is an extreme slope on both sides, and I have been in the landscape business on this island for over forty (40) years, working in hotels and on my land. I grow exotic plants, plus I nurture plants that are sick and I do this in conjunction with my son, who has the licensed landscape business. He is connected to my property, where he uses my property in his business. We barter, which because my slope is like this, his crew, which consists of at least twenty-five (25) or more Hawaiian laborers from the west side, they tie ropes to my trees and they go down the slope in order to do the weeding, if there are any weeds on the weed cloth. My plants have been dug up, my lawn has just been verticutted for another job. A lot of my plants are down at the Kukui'ula Shopping Village and Kōloa Landing because I raise Bromeliads. When people are talking about that you need to show financial ability...that you grow more agriculture than you do take in from a B&B...

Committee Chair Chock: Thank you, Ms. Hoff. We have some questions here. You can go first, Councilmember Yukimura.

Councilmember Yukimura: Thank you for being here, Ms. Hoff. You are on agricultural land. Is your land dedicated to agriculture?

Ms. Hoff: It is agriculture.

Councilmember Yukimura: Is it dedicated to agriculture for special tax purposes?

Ms. Hoff: No, I am given a commercial tax.

Councilmember Yukimura: You are commercial home use?

Ms. Hoff: Commercial home use, yes.

Councilmember Yukimura: Okay. You have a home on that land that has rooms for...

Ms. Hoff: Yes, I rent rooms.

Councilmember Yukimura: How many rooms do you have?

Ms. Hoff: I was operating six (6) and the Planning Department told me I was a hotel and that I needed to cut down to five (5), so I did. That came with their approval.

Councilmember Yukimura: Do you have a permit?

Ms. Hoff: No. They also shut me down, too, because I asked for several years to get that location and you could not.

Councilmember Yukimura: So you also asked to apply for permits for your B&B and were told that you did not need any?

Ms. Hoff: Yes, and that it was not necessary and that would be handled at another time. That was in like 2004. Maybe my husband might know because he keeps all of these records. He might know who he talked to. I am not sure.

Councilmember Yukimura: If you have that information, I am interested in it.

Ms. Hoff: Okay.

Councilmember Yukimura: How many acres do you have there?

Ms. Hoff: About an acre or a little over an acre.

Councilmember Yukimura: That is your lot, not where your kids are?

Ms. Hoff: That is not where my children are.

Councilmember Yukimura: Right...

Ms. Hoff: But almost...

Councilmember Yukimura: They are all close by?

Ms. Hoff: They are right next door.

Councilmember Yukimura: They are adjacent, okay. We are talking about your property, which has what you call a B&B or a homestay.

Ms. Hoff: Yes.

Councilmember Yukimura: It is also used for landscaping or a landscaping business, basically.

Ms. Hoff: Yes, which is basically my son's because he brings me everything that is almost dead or dying.

Councilmember Yukimura: Yes. I see. You have a family business.

Ms. Hoff: Or he comes up and digs up a full grown plant because he needs it.

Councilmember Yukimura: Well, he is lucky to have a mom like you. Thank you.

Committee Chair Chock: Ms. Hoff, just to clarify, your son and you operate your business on your property, your one (1) acre as well?

Ms. Hoff: A portion of it, but he has an additional six (6) to seven (7) acres that he has a complete landscape operation. My material that he specifically wants is dug up, transported over to his acreage, and the seeds from my plants are used for propagation and for all materials that is not needed, he has a large Morbark grinder that is ground for special purposes. It is not commercial; it is his personal thing. So with my talking to you, it kind of falls under...it is a different situation that has not been brought up, I do not think. There are different definitions out there.

Committee Chair Chock: Thank you. Follow-up?

Councilmember Yukimura: What is the total acreage of your children's lot and your lot? I am just trying to get a larger picture of the surroundings?

Ms. Hoff: It is approximately ten (10) acres now. I sit on a hill.

Councilmember Yukimura: Okay. Around those ten (10) acres are all agricultural lots as well.

Ms. Hoff: Yes, we subdivided it. We purchased it over forty (40) years ago and it was a twelve (12) acre parcel. That was subdivided in order to put a road in the back, and then came the time that we could CPR, where we were able to CPR for our children.

Councilmember Yukimura: Okay. Thank you very much.

Council Chair Rapozo: I have a quick question.

Committee Chair Chock: You have one more question here.

Council Chair Rapozo: How large is your parcel?

Ms. Hoff: One (1) acre.

Council Chair Rapozo: Yours is one (1) acre?

Ms. Hoff: Grandma gets the little piece, yes.

Council Chair Rapozo: Are you the operator of the B&B?

Ms. Hoff: I am, yes...well, I was...

Council Chair Rapozo: So you have one (1) structure on your property on that acre?

Ms. Hoff: Yes, I have that and a farm dwelling.

Council Chair Rapozo: Do you live in there?

Ms. Hoff: Yes, I live in the house. I am there 24/7, my husband and I.

Council Chair Rapozo: How many bedrooms in the house?

Ms. Hoff:

The house has five (5) bedrooms.

Council Chair Rapozo:
breakfast?

How many of them are for bed and

Ms. Hoff:

We cut down now, so there are five (5).

Council Chair Rapozo:

Five (5)?

Ms. Hoff:

Yes.

Council Chair Rapozo:

Where do you folks sleep?

Ms. Hoff:

In the kitchen.

Council Chair Rapozo:

You sleep in the kitchen?

Ms. Hoff: Yes. Do you want to know why? It has got the best view. No, my husband is almost seventy-six (76) and I am almost seventy (70) and in order to pay the mounting cost...I have commercial insurance, property tax, and just all the expenses...we moved into the kitchen living room. This is becoming an interesting situation, reducing my numbers down now, because I had another room that I used and it is no longer that. It is a nothing. We took that over.

Council Chair Rapozo: Yes, because earlier you said you had six (6) and the Planning Department said it was a hotel...

Ms. Hoff: Yes, so we took that over, so there are actually five (5) units now. There were our bedroom and our children's bedrooms. That operates as a B&B.

Council Chair Rapozo: But that still leaves you with one (1) extra bedroom, right? You had six (6)...

Ms. Hoff: No, I always had five (5), but I operated like a connection to one of the rooms and that is when we shut that down because they said that is considered a room...it is like a closet.

Council Chair Rapozo: Okay, so all of these five (5) that you rent out are in the same house.

Ms. Hoff: They are under the same roof, yes. It is a huge home.

Council Chair Rapozo:

One entrance? A private entrance?

Ms. Hoff: They all have their own entrance. It was for insurance reasons and my children as teenagers...I designed the home to raise teenagers, so I could at least sleep because I worked at a job that required me 24/7 down at Kukui'ula and Waimea Plantation Cottages. Sometimes I had to be out there at 2:00 a.m. It was also designed to take care of my husband's elderly

parents. It was also designed to take care of any of our children if they could not function on their own.

Council Chair Rapozo: Okay. I just needed some clarification. So you have five (5) bedrooms with five (5) separate entrances.

Ms. Hoff: Yes.

Council Chair Rapozo: Okay. Thank you.

Committee Chair Chock: Thank you. Next speaker.

Ms. Fountain-Tanigawa: The next speaker is Tina Sakamoto, followed by Willian Cown.

TINA SAKAMOTO: Good afternoon Council Chair and Councilmembers. My name is Tina Sakamoto. I would like to thank you for the opportunity to provide testimony on this public hearing of Bill No. 2587, regarding the definition and policy of "homestays." There are some elements that I would like you to consider when you are determining the exact definition and the policies of this commercial enterprise. I would like to have a very concise application, an annual permit fee, initial inspection for health and safety, and thereafter an annual health and safety inspection. I think it would be good to have the permit nontransferable to address some of the parking problems. I think there should be parking per the number of bedroom space. So if there are five (5) bedrooms, there should be five (5) off-street parking. There should be the annual required proof of GE tax filing, TAT, and also the income tax filing to show that they are claiming these fees and this business. I also think it is important that the owner is an occupant owner that is on the premises so that we can avoid an owner who has a second home and they do have this home that they want as a homestay as their homestead, but then for the other portion of the year, it is not really a TVR with an agent. I think that all of these elements are important. There is always the problem of enforcement. Lastly, I think that we should move the TVRs, B&Bs, and homestays into the Resort and Hotel tax rate. Thank you.

Committee Chair Chock: Thank you. Next speaker, please.

Ms. Fountain-Tanigawa: The next speaker is William Cown, followed by Alexis Boilini and Mike Levy.

WILLIAM COWN: Aloha. The Bill before the Council is limited in scope to two (2) issues, pretty simple ones really, but the issues require us to get into history. When we started our B&B business twenty-three (23) years ago, there was no one concerned about regulations. Ironically, our first customer was the new Planning Director and his wife and they stayed with us for two (2) months. We got our TAT license and GET license, but that was all. They even rode out the hurricane with us. Things remained fairly stable for the next fifteen (15) years until this TVR issue broke. The 2008 law was crystal clear and did not apply to bed and breakfast operations. The subsequent 2009 and 2010 revisions did not change that, but when it was passed, Cathy and I, as well as numerous other B&B operators went to the Planning Department to check on our permitting requirements. We checked again in 2010. We were all told the same thing, "You do not need a permit. There is no B&B permitting process in place. We are not after you." That is what we were told and I will be glad to tell you later who told me that.

One individual did manage to get a permit application and submitted it. There was no response for the last six (6) years. It is no surprise if there had been any B&B permits issued in the last ten (10) years. This is important because a select few of B&B homestay operators, with no warning, received extremely onerous cease and desist letters ordering us to shut down, immediately cancel our reservations, cancel your TAT license, or face a ten thousand dollar (\$10,000) a day fine; all based on violations of the TVR ordinance, which again expressly states that it does not apply to B&Bs. There was clearly no permit process available and no warning, so questions arose, "Why are reasonable, hardworking Kaua'i residents being treated like this?" When we asked the Planning Department why these letters were sent out, they pointed directly at the County Council. They said, "The Council made us do it." I received a response from my previous testimony from Councilmember Yukimura stating that the Council had nothing to do with it, and I believe her. The Prosecuting Attorney stated that he had no knowledge of these letters before they went out. The County Attorney stated that he was not aware if one of his deputies had reviewed them or not. The TVR ordinance at least had some due process. There was some time given for people to get their permits in place. There was no shut down required. Why are we being treated like this? What the hell did we do to make it like this?

Committee Chair Chock: Thank you, Mr. Cowern. I will ask you to come back. Next please.

Ms. Fountain-Tanigawa: The next speakers are Alexis Boilini and Mike Levy.

ALEXIS BOILINI: Can we each do three (3) minutes?

Committee Chair Chock: If you two (2) signed up together...I am going to ask you to give your three (3) minutes and come back like everyone else.

Ms. Boilini: You do not start until I start, right?

Committee Chair Chock: Say your name and that is when it starts.

Ms. Boilini: Okay. Thank you. My name is Alexis Boilini and I own Marjorie's Kaua'i Inn. I am glad to be here. It is nice to see you all by your faces. The Kaua'i County Zoning Ordinance Update, also known as the framework "transient vacation rental and bed and breakfast facilities," adopted July 8, 2005, is an established comprehensive framework for addressing the regulations of TVRs and B&B facilities. The regulatory in nature (inaudible) evidences the County's intent to establish a regulatory system for bed and breakfast facilities and encourages the County to weigh the needs of all, prior to adopting a comprehensive legal framework that does not include participation of all visitor accommodation providers. There are two (2) references that I would like to include in this testimony today. In the report, it strongly states, "Definitions are the heart of regulations contained in zoning ordinances anywhere in the United States. It is the lack of appropriate definitions in the Comprehensive Zoning Ordinance (CZO) that create many of the regulatory problems associated with TVRs and B&Bs. The structure of any definition is essential to successful administrative implementation and regulatory enforcement. I want to tell you that I am that lady on the hill that you all keep saying you were not intending to shut down. I am one of only a very small handful of classic B&Bs that serve breakfast to my guests daily as they "ooh and aww" the incredible view of the historical Lāwa'i Valley. They depend on our

knowledge of the island, as far as safety when hiking and swimming in the beaches; restaurants and shops; farmers markets; and one thousand (1,000) helicopter rides and activities have been sold out of our end in the last twenty-three (23) years. We can do these things because someone is there for them 24/7 at their disposal. My place was built as a bed and breakfast and a little over a one (1) acre parcel of mostly unusable agricultural land. Almost half of our property is a long three hundred (300) foot driveway. No one thought that this land could be built on. We are so steep that I would not be surprised to see a goat roll down the hill. The soil tests so bad that the only fruit trees that we have ever been able to grow are over our waste systems. The fruit trees are mostly enough to use for our breakfast bar, in my daily recipes, and organic smoothies, with the exception of our coconuts and our mangoes, which can be sold at the farmers market or donated. We do thin out our (inaudible), which are also sold or donated to a neighboring landscaping, Lorna's son. Under your proposal, I think that we would not qualify for a use permit. We were both at a campaign luncheon...I believe it was September 2008, attended by Barack Obama's sister, Maya Soetoro-Ng. It was right around the time that you were all writing the language for Ordinance No. 864, which states that the Bill does not apply to bed and breakfast units...

Committee Chair Chock: Sorry, that was your three (3) minutes.

Ms. Boilini: That is it?

Committee Chair Chock: Yes.

Ms. Boilini: You are kidding me. Really?

Committee Chair Chock: We have a question for you though.
Councilmember Kagawa.

Councilmember Kagawa: I will give you more time. I have a question.
You said Marjorie's Kaua'i Inn?

Ms. Boilini: Yes.

Councilmember Kagawa: Where is that located?

Ms. Boilini: On a steep slope in the Lāwa'i Valley.

Councilmember Kagawa: Lāwa'i Valley?

Ms. Boilini: Yes.

Councilmember Kagawa: What kinds of trees are the most successful?

Ms. Boilini: The mango trees. That is why the mango
trees can be used for the farmers market.

Councilmember Kagawa: I love mangoes.

Ms. Boilini: Well, I should have brought some. Coconuts
grow well, too.

Councilmember Kagawa: Okay. Avocado, as well?

Ms. Boilini: We have around twelve (12) avocado trees.

Councilmember Kagawa: Okay. Thank you.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: How many rooms do you have?

Ms. Boilini: Three (3).

Councilmember Yukimura: With separate entrances?

Ms. Boilini: Well, you come into a main entrance and the rooms are downstairs. It was built as a bed and breakfast, very private. Upstairs is the eating area, the kitchen; our office; and our bedroom.

Councilmember Yukimura: Okay. You said you have been operating for twenty-three (3) years?

Ms. Boilini: It has been there for twenty-three (23) years. I bought it from Marjorie (inaudible) eleven (11) or twelve (12) years ago. She did try to get permitting even back then before we tried. She was actually part of a group that tried to get permitting for bed and breakfast because she wanted to be part of an umbrella of B&B owners so that she could get referrals from all over the world. We came from Asheville, North Carolina. We had a very formal, large bed & breakfast, so when we came here, we expected to get permitting.

Councilmember Yukimura: Right. When you said she was part of a larger group, was it a group of people on island?

Ms. Boilini: It was a group of people on the island that got together because they wanted to try and get permitting for bed and breakfasts. I know Jonathan Chun did look that up for me. I guess she went in front of one of the councils or commissions two (2) times. I do not know if it was with the group or what, but I am sure we can check into that.

Councilmember Yukimura: If you had any information on that, that would be useful to me.

Ms. Boilini: Yes.

Councilmember Yukimura: One last question, what did I say that you were going to say?

Ms. Boilini: Thank you. I asked you, "JoAnn, when are we going to get certifications for bed and breakfasts?" We talked a little bit and you said, "I know exactly where you are. There is no way you could ever run cattle. That is too steep of a slope." You also said to me, "When I become Mayor..." I guess you were running for Mayor at the time...you said, "Come and see me. We will look at that and take care of that." That did not happen, unfortunately.

Councilmember Yukimura: I meant that we would do an ordinance or bill. I hope you understand that.

Ms. Boilini: You did say that. Actually, I do go over all of those bills and I looked everywhere to see if there was any kind of permitting for a bed and breakfast and there were not. As a matter of fact, there was a news release for the TVRs by the Mayor. On the second page it says, "This does not include bed and breakfast and it will be taken up at a separate matter."

Councilmember Yukimura: What is that dated?

Ms. Boilini: This is a news release dated April 1, 2008.

Councilmember Yukimura: Okay. Can we make a copy of that?

Ms. Boilini: Sure. This was from the Tax Office or a question and answer page...frequently asked page on the Planning Department and somebody asks about their bed and breakfast. It says, "There is no vehicle at present for homestay/B&Bs to apply for a permit. The first round of applications Ordinance No. 864 passed last year addresses TVRs, where owners rent out the entire house/condo property and just those outside the VDA have been processed. The plan for homestay/B&Bs rental is to go through the permit process once this first round of applications is sorted out."

Committee Chair Chock: Can we get a copy of that?

Ms. Boilini: Sure.

Councilmember Yukimura: Thank you very much.

Committee Chair Chock: Next speaker.

Ms. Fountain-Tanigawa: The next speaker is Claudia Herfurt, followed by Yoshito L'Hote.

CLAUDIA HERFURT: Aloha Council Chair and Councilmembers. My name is Claudia Herfurt. Thank you for the opportunity for me to speak. I have lived on Kaua'i for thirty-six (36) years. I am single and my home is my primary residence with a homestead exemption. I have three (3) acres zoned agriculture, but it is unusable farmland because it is on a slope. When I first saw my property, I envisioned sort of a Balinese situated with terraces, but I certainly did not have the funds to do that. Recently, I have cleared some land and planted an orchard in the hope of being compliant. I have had a homestay business for twenty-eight (28) years since 1987 and I have paid all required TAT and GE taxes. My property has no immediate neighbors and was only me and two (2) guests staying on the property. There is no adverse impact on the surrounding neighborhood. I also provide plenty of parking on the property. Since my California neighbor, who comes here only twice a year for a week, obtained a permit for his five (5) bedroom mansion, I am hopeful that I would also be able to obtain a permit for my rather modest operation. I depend on this business, since it is my only source of income besides a very small social security payment of two hundred ninety-two dollars (\$292) a month. I have sat in on numerous hearings for TVRs, and now for homestays; however, I have not been able to obtain a permit. With prohibitive costs for permits and legal fees, and a proposed cap of permitting only ten (10) applications per year, I may not be around to restart my business as I am seventy-five (75) years old at this writing. So when the County of Kaua'i tripled my property taxes and taxed me at a resort rate last year, I was forced to shut down my

business on September 30th...I mean I forced myself to shut it down last year at the end of September, because at that rate, I was not able to continue. I also received a letter from the Planning Department to cease and desist with the threat of a ten thousand dollar (\$10,000) per day. I have been complaint and I have not had any business for over seven and a half (7.5) months, which is very challenging indeed. I hope I will be able to welcome guests again because they love my place and would not want to stay anywhere else. I also hope to be "grandmothered" in.

Committee Chair Chock: Thank you.

Councilmember Yukimura: I have a question.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: Claudia, you said you accommodated two (2) guests. Was that in one (1) bedroom or do you have two (2) bedrooms?

Ms. Herfurt: There is an additional bedroom and bathroom because some couples, especially the older ones, like to sleep in separate rooms.

Councilmember Yukimura: So you have two (2) bedrooms?

Ms. Herfurt: Yes, but I never rent out to two (2) parties because it would be a privacy issue.

Councilmember Yukimura: I see. Okay. It counts as one (1) bedroom because you are accommodating one (1) family or one (1) travel group.

Ms. Herfurt: A couple, yes.

Councilmember Yukimura: I see. Okay.

Ms. Herfurt: It was an option for another bedroom or bathroom, but only to one (1) party.

Councilmember Yukimura: Yes. You also talked about your California neighbor.

Ms. Herfurt: My neighbor above me has a TVR permitted. He is on agricultural land and he planted a few trees, so I have done the same to be somewhat compliant, but he has a permit.

Councilmember Yukimura: Did you say that he recently moved here?

Ms. Herfurt: No, he lives in California.

Councilmember Yukimura: Okay.

Ms. Herfurt: It is a regular TVR.

Councilmember Yukimura: That made...

Ms. Herfurt: Yes, I am just below him, so I was sort of hopeful that I may also be granted a homestay permit since I live here, spend the proceeds here, and make my living that way to pay the taxes. I have lived here a long time.

Councilmember Yukimura: Okay. You say you have a homestead...you are not classified as an owner-occupant in a homestead tax classification.

Ms. Herfurt: Yes, I changed my classification when I received a notice that my property taxes rated at the resort rate would be twenty-two thousand dollars (\$22,000).

Councilmember Yukimura: I remember your testimony last year.

Ms. Herfurt: Yes.

Councilmember Yukimura: Okay, but we did create a commercialized home use so that would be your category if you were to run a B&B.

Ms. Herfurt: Yes, I have to do the numbers and see whether it is even worth it. I hear the fees are high and all of that.

Councilmember Yukimura: Right.

Ms. Herfurt: I may soon be eventually forced to sell my home.

Councilmember Yukimura: Well, we hope that is not going to be an involuntary sale. People do decide at some point to sell for various reasons, but I hope not because of taxes. Thank you very much.

Ms. Herfurt: Thank you.

Committee Chair Chock: Next, please.

Ms. Fountain-Tanigawa: The next speaker is Yoshito L'Hote.

YOSHITO L'HOTE: Aloha Council. Sorry, I am going to wear a couple of hats today and they are not the same; I will make two (2) different testimonies, so I wanted it to be very clear on that. The first portion is on behalf of the Kilauea Neighborhood Association (KNA). I will start with that and restate my name, "Yoshito L'Hote," for the record when I do my own. We were approached a few months ago by one of our community members to ask for a letter of support to make her case to the Planning Department to keep her bed and breakfast going. We had a long debate and basically we thought that everything should be reviewed by a case-by-case basis and there are very strict criteria that need to be followed and need to be applicable. Because of that, it would basically screen and make sure that it is not being misused. Those criteria would be first to present the request letter, map location with her residence, five (5) letters of endorsement from adjacent neighbors, and should not have any complaints against the thing. She needs to describe the bed and breakfast and answer the questions from the board as the practices, management, and operational usage. In her case, she is only renting one (1) room out of the four (4) bedroom residence. She is always present when guests are coming. The guests need to have a parking stall for their car and she is

only booking through one website. There are also one more criteria, which we did not discuss and that I feel is also important, is that the overall density of bed and breakfasts within the community needs to be defined as well. Stating that, she actually complies with all of those things and she has been a very involved community member. We decided to support that letter, but I wanted to make it clear that by no means we just accept bed and breakfasts across the board. In this case, it is within a residential area, so this is in Kilauea. It is different from a lot of people, who have farm issues. I think the farm issues are very dear to my...sorry...I am just going to say on behalf...my name is Yoshito L'Hote, but in my own testimony, I am in favor of the Bill as it is written, but I cannot make this because we did not discuss it as a board, so KNA does not have that position. Thank you.

Committee Chair Chock: Thank you. Councilmember Yukimura.

Councilmember Yukimura: Yoshito, are you personally in favor of the Bill that is before us?

Mr. L'Hote: Yes, that is correct. To the little exception that the ten (10) permits should be ten (10) approved permits. The review process could extend to more reviews than ten (10), as long as they only issue ten (10) a year. We have talked about it with the Board that neighborhood associations are very willing to support the Planning Department in doing a preselection process; by no means throwing people out, but looking at applications and giving some sense of compliance from the application.

Councilmember Yukimura: Are you saying that...are you coming right now...so you are not testifying...let us say that wearing your KNA hat, are you supporting one (1) particular homestay?

Mr. L'Hote: We wrote a letter of support of that one particular homestay and we do not want it to be misinterpreted as KNA is just in favor of the bed and breakfast because that is not the case.

Councilmember Yukimura: That is very helpful clarification.

Mr. L'Hote: I could not make it past any kind of a position for KNA because we did not discuss this particular document.

Councilmember Yukimura: This Bill?

Mr. L'Hote: Yes.

Councilmember Yukimura: But during the hearings before the Planning Commission, the KNA Board did support one particular application, but you are here today to make it clear that that does not mean you support any and all homestay applications.

Mr. L'Hote: Yes, that is correct.

Councilmember Yukimura: Also, that in fact you have some suggested criteria to consider in the overall regular of a homestay.

Mr. L'Hote: Yes. We have communicated that to Mike Dahilig, so he is aware of those recommendations.

Councilmember Yukimura: Okay. Thank you very much.

Mr. L'Hote: You are welcome.

Committee Chair Chock: Thank you.

Ms. Fountain-Tanigawa: The next speaker is Nicki Pignoli, followed by Julie Chong.

NICKI PIGNOLI: Good afternoon Council. Thank you for your consideration on this really complex and very emotional issue for many of us. I am the one (1) B&B in Kilauea that KNA currently has supported, so there is my background. I have lived on the island full-time for fifteen (15) years. I live in a single-family home in Kilauea that is not on agricultural land. I have paid my GE and TAT taxes and have been in compliance with all the laws as I thought existed. I found out that there was one more that I did not know about. I received my cease and desist notice, a nasty one at that, on February 9th and was told by the Planning Commission, Bambi Emayo in particular, that the County Council made the Planning Commission write those letters. If you did not, someone is misinformed at Planning. If you did, then it is time to stand up and say you did. It is really frustrating to not know who is telling the truth when we are trying to do what is right and trying to get to the bottom line. The couple of things I really want to talk about today is the inequity of treatment between the homestay owners and the TVR owners. TVR owners have been defined as "non-Kaua'i residents," with most of them living off-island. Yet, they were given consideration far, beyond, and above what we, as Kaua'i residents, have been given. They were allowed to continue their operations while the law was being put into effect and were told to comply, and those people that had been paying taxes were "grandmothered" and "grandfathered" in. We have no consideration being given to us. We are the ones who are "eking out a living," so to speak or "augmenting our living" and paying that money back to the island of Kaua'i. We are really being hit in the face. TVR permits did not seem to be limited in number...maybe they were, but I did not understand it. Now that TVR permits have been issued, homestays are going to be limited to only ten (10) a year. Why did we not limit off-island residents and now we are limiting island residents with numbers? One of the things I would suggest is that in the definition of homestay, there has been some consideration about people who owned TVRs trying to sneak in under the homestay by having business leases operate their business. Why not define a homestay operation as only be run by the homeowner of the property, then no TVR owner could be possibly using that property for anything other than a TVR. If they could not live there, they could not rent it.

Committee Chair Chock: Thank you. That is your time. We have a question. Councilmember Kagawa.

Councilmember Kagawa: Thank you for your testimony. Are there any neighbors that have B&Bs?

Ms. Pignoli: No, not in my immediate, adjacent area. Maybe eight (8) blocks away.

Committee Chair Chock: There are a couple more questions for you.

Councilmember Kualii: You stated that you paid all of the taxes and fees that you knew about and had all the permits, and then you said, "I found out there was one I did not know about." How and when did you find out?

Ms. Pignoli: I found out about it when I received a certified letter from Planning.

Councilmember Kualii: How long ago was that?

Ms. Pignoli: I received it on February 9th.

Councilmember Kualii: So February 9th...

Ms. Pignoli: The letter stated that I was a TVR and operating as a TVR.

Councilmember Kualii: Was the letter even clear on if you were a homestay/B&B and that you needed something?

Ms. Pignoli: No, the letter stated that I was a TVR and that I was operating illegally and that I needed to call them immediately and shut down within fourteen (14) days.

Councilmember Kualii: So based on what you found out though, you said you did not know. Now you know. What have you done?

Ms. Pignoli: I have contacted an attorney, so Jonathan Chun is representing me.

Councilmember Kualii: No, with Planning.

Ms. Pignoli: I went in and talked to Planning...

Councilmember Kualii: And they did say you do need something?

Ms. Pignoli: Yes, they said that I did need a use permit.

Councilmember Kualii: Have you initiated that process?

Ms. Pignoli: I cease and desisted, cancelled all of my reservations and refunded all of my moneys, I shut my website down, I hired an attorney, I have my use permit in process, and I am going to be heard on the 23rd of June.

Councilmember Kualii: No, but the thing that you did not know about that you now know...can you not do that and then be in compliance?

Ms. Pignoli: It has taken from February 9th until June 23rd to even be heard in the use permit...

Councilmember Kualii: So you are in the process?

Ms. Pignoli: I am in the process, but it is a long, lengthy, and expensive process.

Councilmember Kualii: Okay. Thank you.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: How long have you been operating?

Ms. Pignoli: Fifteen (15) years.

Councilmember Yukimura: So ever since you came...

Ms. Pignoli: The house had actually been operating as a B&B before I bought the house.

Councilmember Yukimura: Okay. It has been in operation even longer than fifteen (15) years.

Ms. Pignoli: Yes, it has been in operation since at least 1991.

Councilmember Yukimura: Okay. How many rooms?

Ms. Pignoli: I am currently just operating one (1).

Councilmember Yukimura: One (1) room...

Ms. Pignoli: I have a choice of two (2) rooms, so they could either choose one room or another.

Councilmember Yukimura: I see. Okay. With your permission, Chair, I just want to reiterate the clarification that was given that the Charter prohibits the Council from directing any department that is under the Administration, under the Mayor, from directing...I mean it prohibits us from directing any department to do anything.

Ms. Pignoli: But that is not the law that Planning is using.

Councilmember Yukimura: Well, I am just saying that we can be removed from office if we do that. So just so you know that we did not do that and I do not believe there is nothing in the record that shows that.

Ms. Pignoli: No, I trust what you are saying is valid, but what I am reiterating is what somebody else said, which we were told by Planning that it was not their doing; it was you guys.

Committee Chair Chock: Thank you. I got it. I appreciate it. We need to take a ten (10) minute caption break, so we will come back to the Chong 'ohana.

There being no objections, the meeting recessed at 3:32 p.m.

The meeting reconvened at 3:43 p.m., and proceeded as follows:

Committee Chair Chock: We are back from our caption break. Next speaker, please.

SCOTT K. SATO, Deputy County Clerk: Our next speaker is Julie Chong, followed by Matthew Bernabe.

JULIE CHONG: *Aloha* Councilmembers. My name is Julie Simeona-Chong and my husband and I live in Lāwaʻi in a three (3) bedroom, three (3) bath home, and we rent in a residential area and we rent out one (1) bedroom with a private bath. I am just going to continue my husband's testimony. For TVRs and homestay operations, to be treated equally, we request that the cease and desist orders that were sent out be retracted and any further issuances be halted while homestay and B&B owners be allowed to apply for their permits while resuming normal operations. In order to comply with County regulations, TVR owner we required to apply for nonconforming use permits that were granted by officials of the Planning Commission. As more and more applications were received and reviewed, the permitting process was streamlined, and this allowed for faster review and approval. Conforming use permits issued before...wait a minute...sorry. Currently on the County's website, there are approximately four hundred fifty (450) active nonconforming use permits issued before a deadline was placed where no other applications would be accepted. This would unofficially mean that an average of two hundred (200) to two hundred twenty-five (225) nonconforming use permits were issued per year. They were not subject to any limitations on the number of applications that could be reviewed annually. In contrast, homestay owners are presently required to apply for use permits by way of Planning Commission review and public testimony with an additional proposal to limit the amount of applications that can be reviewed to ten (10) per year. For TVRs and homestay/B&B owners to be treated equally, we request that the proposed ten (10) count cap be removed and replaced with a permit review process similarly used for the TVRs. It is clear that there is inconsistency and injustice regarding the treatment of TVRs versus homestays in the use permitting process and we would like to see equal consideration for all short-term transient rentals, whether they are in residential, agricultural, or VDA areas. In addition to Darryl's testimony, I would like to add that adding a cap of reviewing ten (10) homestay applications for use permits a year would not regulate the homestays, but eliminate them all together. Speaking for ourselves, it has been three (3) months since we stopped our rental and already feeling the impacts.

Committee Chair Chock: Thank you, Julie.

Councilmember Yukimura: I have a question.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: First of all, can we have a copy of your testimony?

Ms. Chong: I did submit it.

Councilmember Yukimura: Great. Thank you. How long have you been operating?

Ms. Chong: Since March of 2007.

Councilmember Yukimura: March of 2007, and how many...you said one (1) bedroom.

Ms. Chong: One (1) bedroom, right.

Councilmember Yukimura: That is fine. Thank you very much.

Committee Chair Chock: Thank you. Next, please.

Ms. Fountain-Tanigawa: The next speaker is Matthew Bernabe, followed by Greg Allen.

MATTHEW BERNABE: Matt Bernabe, for the record. Well, I do not have a B&B or a TVR, but I am more against TVRs than B&Bs. That is enough said on that. Another thing I would point out on hindsight is something that might make this a lot easier to figure out moving forward, which would be to have all the due process transactions made public, because as I pointed out to you after the meeting, they did try to pin this on you...not you, personally, but the Council in general as the backers of this issue that we have today. That would also help in other issues. I just think that we should not let somebody plead the fifth or not give the answer without a job resignation at the same time. So I think the language being spoken over the last ten (10) years should be made public. That might help moving forward. As far as moving forward, if it is in a residential, I am more preferable to having them on a farm, agricultural land, because we have language that advertises agrotourism, which is part of the zip lining and part of the quads. They do have language in talking about agrotourism. For the residential side, until we have tackled our method of getting taxes on our homes, this mass appraisal method, I do not want their property to go up because they got two (2) to three (3) guests and it makes them more valuable to sell it as a business, and my tax goes up because of the way we do it. I think they should be in their own group. Not only do they get a different rate, but they should not be classed with the residential neighbors. The total bulk of them, if it is Kekaha or Hanalei, that is who should be in their group for the mass appraisal bundling, to me. If those mechanisms are not in there, then I am definitely not for it in residential. The other thing is, like the brother said earlier...I do agree case-by-case because if you are sleeping in your kitchen to keep adding rooms...I do not know how much your property costs, but I own a house and we do not have to rent out five (5) rooms just to get by. They sounded destitute to me to where they are sleeping in a kitchen. There has to be a cap at how many before you reach hotel status to me. There has to be some specific language and strong criteria. I am not all against the business, do not get me wrong, but we have to be real about it. We cannot be sleeping in the kitchen. Or like that other sister said earlier, she is the renter who has the business. I was thinking that is not a bed and breakfast. You have to live there; you have to be an owner.

Committee Chair Chock: Thank you, Matt.

Mr. Bernabe: That is what I wanted to say. I am sure there will be other times to talk about this.

Committee Chair Chock: I notice that we are going into second rounds. Mr. Allen was one of our first speakers. Before you come up, Greg, is there anyone else who has not had an opportunity to testify and would like to? We are going to go to second rounds right now. If not, Mr. Allen. Someone has left a pair of glasses. I

do not know if you are still in the audience or if you have left already, but we have your glasses here. You do not need a permit for them. Go ahead, Sir.

Mr. Allen: Greg Allen. My earlier testimony was mostly about the mix between TVR and homestay and how they are intertwined. I just want to note for the record that the tourist industry has its ear to the ground. It is prevalent on travel sites, "Watch out for Kaua'i. You will go and have your vacation ruined. People come and their plans are changed." If Kaua'i destroyed my vacation, I would probably never come back to Kaua'i. Anyway, now we are here discussing this new Bill because the Planning Department has been really aggressive in the TVR ordinance and the loopholes that are there, which have caused us to be here. My hope is that you will not say no to this segment of tourism. It is a segment of tourism that is not going to go away. People want to go to vacation rentals. We have to manage it. I am going to mention real quickly that the one hundred eighty (180) days is, from my understanding, not constitutional and never been upheld in the Country, and that thirty (30) days as a short-term rental is the only thing that has been constitutionally upheld, which if forced all the way to a Supreme Court action, all of this could be moot because there would be a thirty (30) day limit. Let us do something that is more productive. Maybe we can find a balance. Let us keep our neighborhoods running smoothly and enforce noise ordinances, parking ordinances, sewer system regulations, and we could add the police to this equation and control our neighborhoods without taking people's property rights. I want you to consider that Kaua'i is an island economy and we rely on what we can to be financially stable. The County is a business and it is an economic engine. I do not know if I am right, but I think I last heard that we were about eight million dollars (\$8,000,000) in debt. How much will this new Bill cost taxpayers if we lose this revenue stream? If it succeeds in destroying the visitor industry, what taxes will you need to raise to make up for lost revenue of possibly one thousand (1,000) plus vacation rentals? How many families will you hurt? How many families are funding their children's college education? How many local maintenance industries like realtors, cleaners, painters, and professionals will be unemployed? Please make rules to police our communities and neighborhoods. Do not destroy families and our economy. We talked about the ten (10) permits. To me, that is just nothing. It is a joke. I believe that the Planning Department is in a bad position. They have been forced to enforce this ordinance. It is incomplete. You have the opportunity to look at it and to stop action that possibly has already been done illegally on our citizens and at the very least, some things have been that were wrong. Please remember that freedom and the entrepreneurial spirit cannot tolerate tyranny. We are a democracy. Thank you.

Committee Chair Chock: Thank you. You have a question here.

Councilmember Yukimura: So you run a homestay or were running a homestay until you got a cease and desist order?

Mr. Allen: I do.

Councilmember Yukimura: How many bedrooms did you have available?

Mr. Allen: I do not own a homestay. I just help some other people.

Councilmember Yukimura: Okay.

Mr. Allen: This will take a minute...

Council Chair Rapozo: Mr. Chair...

Committee Chair Chock: Yes, just answer the question if you can, please. Can you restate the question so he can answer it?

Councilmember Yukimura: Were you running a homestay before you got a cease and desist order, and if so, how many rooms did you have?

Mr. Allen: Four (4).

Councilmember Yukimura: How long have you been running it?

Mr. Allen: Since late 2010.

Councilmember Yukimura: Is it on agricultural land?

Mr. Allen: No.

Councilmember Yukimura: So it is in residential then?

Mr. Allen: No, it is open zoned on 'Anini Beach Road.

Councilmember Yukimura: Okay, that helps me understand.

Mr. Allen: We were told by the County Administration that the TVR ordinance would not affect us. We live here. When they sent us a cease and desist, we said, "Great, we will just be a homestay." So we are one of them who are "wolf in sheep's clothing."

Councilmember Yukimura: Okay, so you do not live in it? You are not an owner-occupant?

Mr. Allen: Yes, we do.

Councilmember Yukimura: Okay, you live in it. Thank you.

Committee Chair Chock: Would anyone else like to testify?

Ms. Punohu: *Aloha.* My name is Anne Punohu. We have heard some fascinating stories today, have we not? Of course as we all know, things will flush out the way they will, but I want to remind everyone in this room of how we got to this place. What we did after the hurricane in a giant land grab that occurred on Kaua'i and everybody got a piece of Kaua'i, except for some of us who are sitting in this room like myself. But I am here to support this even though I do not have land, a home, a homestay, a farm, or anything. We know that we need regulation and we know that we need to be fair. I think that some of the people that have stepped forward today are extremely sincere and I think some of the people who stepped forward have some really fabulous stories. However, I want to remind everyone that if you continue to allow the overtaking of our opportunity to live inside of four (4) walls to everybody else that can afford it, and those of us who are the real "meat and potatoes" of this island...the ones that clean your house, mow your lawn, or any of that; the class of workers who need housing. I have been

fighting for low income housing for decades. This is a problem. This causes an inequality, a huge gap in our entire housing structure. If we can continue to allow the upper class/upper level...all of this stuff to go on, where are the people going to live? I just got back from O'ahu and I saw people living under bridges, but I also saw thousands of units that people can live in. Some of them are great, but they advertise, "We will let you stay in our living room in a futon." They advertise that on Craigslist. That is what we are going to get to over here eventually because they are going to figure out a way to do it anyway. I just saw an ad for Honopū for some tented thing for eight hundred eighty-eight dollars (\$888). It is getting crazy out there guys. People are renting tents somewhere in Hā'ena and saying, "Yes, there is your luxury tent that you get to stay in." We need to do something and something that works. It may bite some people in the 'ōkole, but then that is what happens. We need to remember that everybody needs a house. Let us take care of the people. *Aloha.*

Committee Chair Chock: Thank you. Caren, you may come up.

Ms. Diamond: *Aloha.* Good afternoon Councilmembers. Caren Diamond. I wanted to finish up our testimony from earlier with some of the numbers. The County has permitted in the Hanalei District their TVR nonconforming use permits: there are four hundred sixty-nine (469). Out of that four hundred sixty-nine (469) in the Hanalei District, two hundred sixteen (216) of them are from Hanalei to...not to the end of the road, but to the end of where the County's jurisdiction is, so the beginning of conservation district in Hā'ena. Predominantly, there are one hundred twenty-four (124) in Hanalei and ninety-two (92) that were permitted in the Wainiha-Hā'ena area. Almost fifty percent (50%) of the vacation rentals that were permitted are on the north shore in that small area, even though it takes up probably the smallest geographical area. So that is why we are saying no more in the Hanalei District. It really is out of balance. If you look at our testimony that we submitted, the green blobs on it shows the VRBO advertisements that happen outside of the VDA, which is almost the size of the visitor industry in the VDA. If you look at the picture below it where you have the evacuation map and you see that there is no evacuation for all of these people, and it interferes with the health, safety, and welfares of both the residents and visitors who stay there. So we have very real reasons for asking for no more TVRs, no more B&Bs, and no more homestays in that area. I wanted to add a little bit to where I think Planning says the Council gave them the directive, and it comes back from back in September/October, when the issue was before the Council in TVRs and how the County Planning Department was doing with enforcement. There were all of these properties that claimed they were vacation rentals that were not permitted. I do believe that the Council asked for enforcement, as well as the community. How do we have three hundred twenty (320) more additional vacation rentals that are claiming vacation rentals that did not have those permits? Again, that permit number was four hundred sixty-nine (469) that were permitted islandwide. Three hundred twenty (320) is a pretty sizable addition to that. All we are asking for is zoning to be respected and residential areas to be residential areas, because with a quarter million visitors coming here a year, if they all want to stay in our neighborhoods, we have nowhere to live. Thank you.

Committee Chair Chock: Thank you. Would anyone else like a second time to speak?

Ms. Pignoli: Hi, Nicki Pignoli again for the record. I just wanted to say that homestays and B&Bs play a really unique part in our vacation

accommodations. Some people come to Kaua'i instead of going to O'ahu because they want to come to a more "countrified" area. They enjoy being in a private home and enjoy having breakfast with people who live here and learn about the island, the local beach conditions, and safety, as well as the history of the 'āina. You are not going to find that same visitor who is going to stay in a hotel. If they cannot stay in a B&B here, they are going to go to Hawai'i Island, O'ahu, or Maui. They are going to look for B&Bs elsewhere. These B&Bs that you are regulating...and I am in favor of regulation...I would just like to state that there are three hundred twenty (320), but none of them who are here today and none that I have heard of have any complaints on record. We have been good neighbors. Our neighbors for the most part did not even know that we were running B&B operations. We are so quiet and below the radar. It is not the same as a TVR. It is not causing an impact in the communities. We just want to live here and share this island that we love with our visitors. Please let us do that and find a way that we can continue to grow together. Thank you.

Committee Chair Chock: You have a question here. Councilmember Hooser.

Councilmember Hooser: Thank you for your testimony. You mentioned the complaints. As I sat here...this is our third hour or so...I am learning a lot and it is good, but I was struck by the lack of...there is no one here that I remember that has complained about noise next door or too many cars. Some people have not been supportive of the industry, but no one has been here complaining about the impacts.

Ms. Pignoli: Exactly.

Councilmember Hooser: So you are saying with your operation, there are no complaints?

Ms. Pignoli: In my operation in fifteen (15) years, I have never had a single complaint. The neighbors for the most part when I went around the neighborhood asking for support letters did not even know that I was running a bed and breakfast, unless they were personal friends of mine who knew I was doing it and their parents stayed with me because their home was too small to accommodate them. I think most of these owners here, if you checked with them, would not have any complaints issued. If you checked on VRBO, there would be no complaints. If you checked on Trip Advisor, there would be no complaints. We are not causing problem, but problems have been created that are being caused that we are feeling.

Councilmember Hooser: Thank you.

Committee Chair Chock: Thank you. Mr. Cowern, I will have you come up next.

Mr. Cowern: Bill Cowern again. Just on a personal note, we tried about nineteen (19) years ago to set up a tree farm business. We saw an opportunity that when the sugar companies were going out that we might be able to do something that would be meaningful for the island. I believe next week, we will start delivering our first loads of chips to this new power plant, which would not have been able to happen if we had not started that tree farm. There is no way that I could possibly have survived all the various ups and downs, the 2008 debacle

problems associated with 2001. There were any number of things that could have put us down, but every time we ended up having a real financial difficulty, we were able to just kind of squeak through because of the B&B business that we had. It was because of that business that we were able to make this three thousand five hundred (3,500) acre tree farm work. That farm, I believe in the next two (2) years because of now the ability to have some cash flow, we will start providing other jobs...other construction/lumber, finished lumber, cabinets, and etcetera; all because we made it this far that we now have the ability to provide that kind of material. We live up in Lāwa'i Valley, up *mauka*. I am not certain, but I think we are the only rental business up there at all. Our neighbors do not want us to shut down. They do not want us to. They use us all the time with weddings, funerals, visiting families, or whatever. They use our business. Lots of times, we do it at a reduced rate. Sometimes we do for nothing, just depending on the circumstances, but we do it that way because we want to be good neighbors. Most of the B&B and homestay owners want to be good neighbors. They live here and they work here. It is very frustrating to go through the process we are going through right now. Thank you.

Councilmember Yukimura: So you do not live on the same parcel where you are growing your trees, right?

Mr. Cowern: I grow trees on the parcel as well, but clearly it is not the major portion of the business now.

Councilmember Yukimura: How big is the lot that you live on?

Mr. Cowern: Three (3) acres.

Councilmember Yukimura: How long have you operated the B&B? I am sorry, your wife probably said it.

Mr. Cowern: Since 1992, two (2) weeks before the hurricane.

Councilmember Yukimura: Okay, thank you.

Mr. Cowern: That was our first hit.

Councilmember Yukimura: Thank you.

Councilmember Hooser: I have a question or two. You mentioned the complaints and that your neighbors like you and they do not complain.

Mr. Cowern: No.

Councilmember Hooser: So when you look at reasons why the industry may not be a positive thing for the community, people would point to complaints and traffic, but they also point to the erosion, or let us say, of affordable housing. I can understand with the TVR you have a standalone house and is taken off the market, but in your case, would you speak to that element of it? Do you have any background of affordable house? If you were not allowed to do a B&B, would you be renting those rooms out to...

Mr. Cowern: No. First of all, we are not allowed to have kitchens. Who are you going to rent a room to? Unless you want to get pretty tight with somebody for a long period of time, which we doubt. The B&B business is a nice business because it attracts some really nice visitors. You get really good visitors. For the most part, it is wonderful to have them around you and to talk with them and interact with them. They go out to eat. They do not need too much from you. It would be much more difficult if you tried to long-term rent a room in your house to somebody who was going to use your kitchen. I doubt my wife and I would want to do that.

Councilmember Hooser: Okay. Thank you very much. That is kind of a reoccurring theme buried in some of the opposition that this is somehow taking away from long-term rental inventory.

Mr. Cowern: I do not see how to be honest with you.

Councilmember Hooser: Okay. Thank you.

Committee Chair Chock: Mr. Bernabe.

Mr. Bernabe: Matt Bernabe, for the record. I just wanted to add...I have to go because I have kids, but I wanted to add in what I left out, which was until the taxes are changed and for the planning purposes of these B&Bs and if they do end up in a residential, I think a provision...a criteria should be that they go to their neighbors within that area and let them know or get the permission that they are all claiming...I do not hear any complaints, but one of the reasons is, and this is for you Mr. Hooser, is B&Bs only take couples. Most of these people do not accept kids. That is the fundamental difference. A TVR is a whole family or multiple families. I do not think anybody in here lets kids to go their B&Bs. It is very few if anything, a very small percentage. There is your answer. That would go to your complaint. But with the tax issue, which is what I care about, if my neighbors in my residential is putting in this business with three (3), four (4), five (5), to six (6) couples coming in, I do not mind three (3) to four (4), but there has to be a limit. I do not know what it is. But go and get permission. Get consent in form that there is a potential for our taxes to rise because of their industry next to my residential home. I am all about these taxes. I know you guys have to tackle that on its own issue and that is not the issue here today, but it is tied in with this issue, very much so. I know there is going to be more steps to this and I just want that to be in your brains as you are going over this in Executive Session. Thank you very much. I have to go to jiu jitsu now. *Aloha.*

Committee Chair Chock: This is Mr. Taylor's first time to speak. Please come up.

KEN TAYLOR: Chair and Members of the Council, my name is Ken Taylor. I was not going to speak today, but I do not have a B&B. This is just another example of "ready-shoot-aim." We have one part of government not knowing what the other part is doing. It is really sad. Under a management style of government, this would have never happened because the discussion would have been here on the floor before any letters were sent out to stop doing anything. It is really a shame that this government structure has gotten to this point where things are happening without...apparently it happened from over there and you do not know that it was going on, which is a shame. Now we have to try to piece the pieces back together and solve a problem. But I do have one problem and one concern and

that is there were a number of vacation rental units that were outside of the designated zone that were supposed to be stopping their activities. In my neighborhood, I have three (3) of them and they are still operating illegally. They have had websites. I gave the websites to the Planning Department. Nothing has happened. What I can see now that is going to happen is that they will apply for a bed and breakfast and continue to operate. That is a concern. I do not know how you address that and deal with these people that have been doing this B&B-type of operations for a long time. If I had my say, I would say that they should all be required to put in their applications immediately and within sixty (60) to ninety (90) days get their permits to them and get them moving forward. But as I said, I am very concerned about how this is going to deal with all of the illegal vacation rental units that are out there. Thank you.

Committee Chair Chock: Thank you. We have a question here.

Councilmember Yukimura: Ken, when you are talking about these illegal operations in your neighborhood, are you talking about standalone TVRs? Is that correct?

Mr. Taylor: I am talking about homes that are operating vacation rental units out of their homes.

Councilmember Yukimura: Do they have an owner-occupant living in the house?

Mr. Taylor: They are living there, but we are single-family agricultural zoned properties, and this is going on. I do not believe it is the proper zoning for TVRs.

Councilmember Yukimura: I am trying to understand whether you are referring to TVRs or homestays when you are talking about illegal units in your neighborhood? Which is it?

Mr. Taylor: I am talking about TVRs.

Councilmember Yukimura: Okay. Thank you.

Committee Chair Chock: Thank you for your testimony. I think this might be our last speaker for the day.

Ms. Boilini: Alexis Boilini, Marjorie's Kaua'i Inn. I just realized back there as we were talking that I really think that everyone has been mistaking bed and breakfast with Airbnb. Bed and breakfast has been around forever, but Airbnb came on the scene about one year and a half (1.5) ago and there are about seven hundred fifty (750) of them...on VRBO and Airbnb. They are interchanged, but actually they are just people that really are not in the business and they are renting a room out. You might have to go outside to a shed in the bathroom, sleep on the mat, or a yurt. That is a completely different animal than Airbnb. I just want to say that. I think that everyone is getting confused. I am going to just go with what my husband wrote. I will read and try to shortcut it. "The only line that the Planning Department ever uses is the very last line and it is 864 that says, 'Homestays are presently regulated through the use permit process,' which we know now was not the case. There had not been a single use permit in place since 2004 and in the framework it says that there were eight (8) use permits

for bed and breakfast in effect at the time between the studies between 2000 to 2005. But as today, there is not one use permit for a homestay outside the VDA. Also, I find it incredibly unfortunate that this body cannot somehow lift the cease and desist order until the Planning Department performs a more thorough process of due diligence to see that we are clearly not TVRs. Mr. Hull says that he cannot enforce the law selectively, yet that is, in fact, what he is doing by only going after those of us who had been waiting our turn in the permit process line for so long. We really are not 'wolves in sheep's clothing.' There are many different approaches to the same issue and there are no uniformly correct answers, except when creating regulations. Adoptive bodies like yourself should question whether regulations are related to public health, safety, and welfare, and they should consider whether the regulation is considered with prevailing legal doctrine, which requires that all citizens receive equal protection under the law and that the due process is followed when enforcing the law, which everybody here...many people have said is has not happened, as far as the Planning Department is concerned. It seems that no one went back to see where the ordinance had left off in 2008, and again in 2010, and actually even in 2014 before stamping those letters ordering us to stop taking reservations and suddenly turn our guests away. Our demographic seeks out a different type of accommodation away from the vacation area and they want to be aware from timeshares, hotels, and VDAs, and they want to be someplace private, quiet, quaint, and personal where they can perhaps share their morning breakfast with travelers; sharing their experience and advice." They tell us over and over again that if they had no choice to stay away from crowded areas at places such as ours, they will not come to the island. They will just go to the next vacation destination where they can find it. I am sure you have all been at bed and breakfasts like my own.

Committee Chair Chock: Thank you. We have a clarifying question from Councilmember Yukimura.

Councilmember Yukimura: In your case, you have been paying excise taxes since you operated?

Ms. Boilini: And liability insurance.

Councilmember Yukimura: Okay. You mentioned seven hundred fifty (750) Airbnb. Is that supposedly on Kaua'i?

Ms. Boilini: Yes. On Airbnb, there are seven hundred fifty (750) Airbnbs. That is not what we are. There are only five (5) of us that serve breakfast on the island.

Councilmember Yukimura: Well, we are going to have to distinguish between Airbnb and homestay if we are to regulate them. What is the distinction between homestay and Airbnb in your mind?

Ms. Boilini: It is like the difference between a taxi company and Uber taxi. Anybody without regulations or permits can just start driving a car and pick up people from airport. They only collect Federal taxes because the Federal government is starting to force that, but they do not pay GE or TA taxes, because they are not forced to do that. They do not even understand that they have to pay those.

Councilmember Yukimura: Okay. Thank you very much.

Committee Chair Chock: We have one more question from Council Chair Rapozo.

Council Chair Rapozo: This is kind of along the lines of Councilmember Yukimura because you said that it is different, but it is not.

Ms. Boilini: Why so?

Council Chair Rapozo: That is why I am asking you. Why are they different?

Ms. Boilini: Any owner can sign up on Airbnb and rent a room out, a garage, or a Home Depot shed, put a bed in it and rent it out. There are no regulations.

Council Chair Rapozo: Right, but do you not think that this ordinance should cover them?

Ms. Boilini: Airbnb?

Council Chair Rapozo: Right.

Ms. Boilini: You can go after them separately.

Council Chair Rapozo: No, but you have to have an ordinance in place.

Ms. Boilini: Who has an ordinance in place?

Council Chair Rapozo: The County has to have an ordinance in place so that we can go after those Airbnb.

Ms. Boilini: Yes, I absolutely agree that you should have an ordinance. We have been waiting for an ordinance.

Council Chair Rapozo: What is "bnb" stand for? It is "bed and breakfast." That is what they are promoting. They are selling rooms, tents, and all of that, but they are hiding under the name of a B&B.

Ms. Boilini: Right. Bed and breakfasts have been around for one hundred (100) years. Airbnb took the word "bnb" because it has been so popular for hundreds of years.

Council Chair Rapozo: Brilliant idea.

Ms. Boilini: Yes.

Council Chair Rapozo: Yes, brilliant idea. The question is does that belong here on Kaua'i? I do not know.

Ms. Boilini: Personally, I do not think so. I would love to see those seven hundred fifty (750) people because there are no regulations whatsoever. They are not self-regulated. A B&B owner calls another B&B owner

and says, "Hey, I have two (2) people that need a room on this such and such date." I cannot take them because they have a kid or they want call me and ask, "These guests want breakfast. Do you serve breakfast?" I do not. We kind of self-regulate ourselves because there is no organization here.

Council Chair Rapozo: I understand that, but I just wanted to clarify that the B&B are...

Ms. Boilini: We absolutely believe that you should have permitting. We absolutely believe there should be regulations. We beg for that. I have been in the bed and breakfast business for thirty-seven (37) years.

Committee Chair Chock: Thank you. You folks spoke separately, so I will let you speak for thirty (30) seconds. Go ahead.

Mr. Chong: Darryl Chong, for the record. Just to clarify what Alexis was saying and Councilmember Rapozo was asking. It is in my mind that B&B can also be designated as "bed and bath." So Airbnb is a website that some people just, as Alexis was saying, can rent out a tent or yurt and have toiletries outside. But we are not like that. We are residents here that rent out a room or bedroom with their own running bathroom and shower. In Alexis' case that is a bed and breakfast. Some people get confused with bed and breakfast or bed and bath. It is also just saying quickly, "B&B." To decipher is very important and how it is being worded. I hope that helps.

Committee Chair Chock: There are a lot of variations to Airbnb, so I would not want to go down the road of trying to full explain it right now at this moment. If you can go and look it up, then you will learn about it really quickly. Do you have a clarifying question?

Councilmember Yukimura: I do.

Committee Chair Chock: Please do.

Councilmember Yukimura: Would you say that all of the people here who have been talking about their homestays or B&Bs that they provide bathrooms separate from the family bathroom? Is that what you are saying?


Mr. Chong: Generally, I know I can speak for myself that the room has their own bathroom. They do not use my shower outside where I have the "Kaua'i style," where it has a washer and drier, a washroom, a shower and a toilet for the guy to use because they are always coming in dirty, right? The idea of the guests, they have their own bathroom, shower, toilet, and room.

Councilmember Yukimura: Okay. Thank you.

Committee Chair Chock: Thank you very much everyone. This will conclude our public testimony if there is nothing else. Thank you all for your contribution. We will be hearing this next week.

There being no further testimony on this matter, the public hearing adjourned at 4:25 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. K. Sato', with a stylized flourish at the end.

SCOTT K. SATO
Deputy County Clerk

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